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Third Session—Twenty-eighth Parliament
1970-71

THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

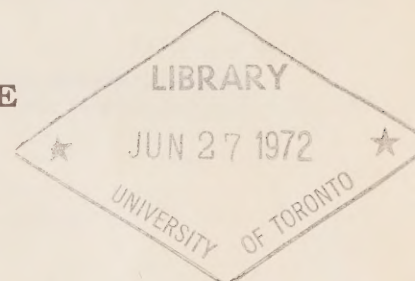
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

I N D E X

OF PROCEEDINGS

(Issues Nos. 1 to 12 inclusive)





THE SENATE OF CANADA

Prepared

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CONSTITUTIONAL AFFAIRS

The Honorable J. HARRIS TROWER, Chairman

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OF PROCEEDINGS

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

★ DEC 9 1970

No. 1

TUESDAY, NOVEMBER 17, 1970

First Proceedings on Bill C-172,
intituled:

“An Act respecting the Federal Court of Canada”

(Witness: — See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hollett
Aseltine	Lang
Belisle	Langlois
Burchill	Macdonald (<i>Cape</i>
Choquette	<i>Breton</i>)
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McGrand
Croll	Méthot
Eudes	Petten
Everett	Prowse
Fergusson	Roebuck
*Flynn	Smith
Gouin	Urquhart
Grosart	Walker
Haig	White
Hayden	Willis

*Ex officio member

(Quorum 7)

Orders of Reference

Extract from the Minutes of Proceedings of the Senate of Monday, November 16, 1970:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Lamontagne, P.C., for the second reading of the Bill C-172, intituled: "An Act respecting the Federal Court of Canada".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, November 17, 1970

(1)

Pursuant to notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators: Connolly (*Ottawa West*), Flynn, Grosart, Hayden, Langlois, Smith, Urquhart, Walker. (8)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel and Director of Committees.

The Clerk of the Committee reported the absence of the Chairman and requested a Motion to elect an Acting Chairman. The Honourable Senator Connolly (*Ottawa West*) moved that the Honourable Senator Urquhart be elected Deputy Chairman. The question being put on the Motion, it was Resolved in the affirmative.

On Motion of the Honourable Senator Grosart it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-172, intituled: "An Act respecting the Federal Court of Canada".

The following witness was heard in explanation of the Bill:

Mr. D. S. Maxwell, Deputy Minister and Deputy Attorney General, Department of Justice.

At 12:15 p.m. the Committee adjourned to Thursday, November 26, 1970, at 10:00 a.m.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Tuesday, November 17, 1970.

[Text]

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-172, respecting the Federal Court of Canada, met this day at 11 a.m., to give consideration to the bill.

The Clerk of the Committee: Honourable senators, in the absence of the chairman of the committee, is it your pleasure to appoint an Acting Chairman?

Senator Connolly (Ottawa West): Honourable senators, I should like to move that Senator Urquhart be appointed not Acting Chairman but Deputy Chairman of this committee, so that it will be unnecessary for us to elect an Acting Chairman at each sitting.

Senator Langlois: I second the motion.

Motion agreed to and Senator Earl W. Urquhart appointed Deputy Chairman.

Senator Earl W. Urquhart (Deputy Chairman) in the Chair.

The Deputy Chairman: Honourable senators, I should like to thank you for electing me Deputy Chairman of this the Standing Senate Committee on Legal and Constitutional Affairs. I shall endeavour to do the best I can at this and subsequent meetings to fulfil the duties of Deputy Chairman.

We have before us this morning for consideration Bill C-172, an Act respecting the Federal Court of Canada.

This bill was sponsored in the Senate by the honourable Senator Connolly (Ottawa West), who gave a complete analysis of the bill and an excellent historical review of the Exchequer Court of Canada, as it is known today. The purpose of this bill is really to remodel and update the Exchequer Court of Canada, which was established many years ago, in 1875. I do not propose to give a summary of the bill, in view of the fact it was so well explained by Senator John Connolly.

We have with us this morning as our witness, and as an expert on this piece of legislation, Mr. Maxwell, who is the Deputy Minister of Justice and the Deputy Attorney General of Canada. I think perhaps it would be well for Mr. Maxwell to give us a quick review of the highlights of the bill, and then honourable senators could

question Mr. Maxwell on any of the clauses of the bill on which they desire clarification.

Mr. D. S. Maxwell, Q.C., Deputy Minister of Justice and Deputy Attorney General of Canada: Thank you, Senator Urquhart.

This bill was prepared to do a number of things that we felt desirable from the point of view of the federal administration of justice in this country. One of the primary things was to create a new court of appeal that would sit in between, as it were, the trial bench of the Federal Court and the Supreme Court of Canada.

That was needed for a number of reasons, one of which was simply the very great overloading that the Supreme Court of Canada judges have experienced in recent years. A great deal of that overloading was coming from the Exchequer Court of Canada. I estimate that roughly 20 per cent of the work load of the Supreme Court of Canada was resulting from that Court. What was worse was that it was coming up to the Supreme Court of Canada as the final Court of Appeal in an undigested form. Those who are lawyers and practise in the courts will know that the court of last resort in this country is not perhaps too well equipped to deal with appeals that come directly from a trial judge and a trial bench. So it was felt that this was a needed reform that was long overdue.

Senator Connolly (Ottawa West): Mr. Maxwell, would you mind explaining that a little more fully? I refer to the last statement you made, that the Supreme Court of Canada has not been able to deal with judgments coming directly from a trial court.

Mr. Maxwell: Yes. As you know, Senator Connolly, the work load of the Supreme Court of Canada comes largely from the courts of appeal of the provinces. At that stage you have the case looked at, first of all, by a trial judge and then by a provincial Court of Appeal, consisting usually of three to five judges. Then, ultimately, the questions are boiled down to usually a fairly few important questions of law that the Supreme Court of Canada has to decide. But where there is no intervening Court of Appeal, you have really a mish-mash of facts, if I could put it that way, that has not been digested by an intervening Court of Appeal, and it means that the Supreme Court of Canada has to do the work not only of the court of final resort but also the work of the original Court of Appeal to refine the issues that are worth deciding and then make a final judgment on questions of law. So it very substantially increases the work load of the

Supreme Court of Canada, to the point where it has become a serious problem. We feel that this particular measure will go a substantial distance to remedying the serious work load the Supreme Court of Canada has before it on its normal lists at the present time.

Another virtue the intervening Court of Appeal has, is practice to develop because, again as part of the problem I was originally mentioning, the Supreme Court of Canada has been very reluctant to entertain appeals on practice matters arising in the federal courts. They simply have not got the time, and you have to have a matter of extreme importance before you could ever convince the Supreme Court of Canada to look at a matter of practice. The result is that at the federal level in this country there is virtually no law of practice in the federal courts.

This new intervening court of appeal, we hope, will permit a jurisprudence of a practice nature to develop at the federal level, which we think is highly desirable from the practitioners' point of view.

There is another point I should mention. Over the past few years—indeed, the last 10 to 15 years—there has been developed a practice of dumping appeals from a variety of special tribunals directly into the Supreme Court of Canada. You have boards with three to five members sitting on them. I could mention the National Energy Board, just to take an example. The tendency has developed to drop appeals from that sort of board directly into the Supreme Court of Canada—I suppose because it was felt it would not be cricket to give an appeal to a single judge of the Exchequer Court when the judgment, in effect, was coming from, say, a five-man board.

Senator Connolly (Ottawa West): This was done under statutory authority?

Mr. Maxwell: Yes, but a great many statutes in recent years have been written in that form. Again, this has produced an undesirable result of the Supreme Court of Canada having to direct its attention to appeals directed to it from a whole series of federal boards and tribunals. This again has created problems for the Supreme Court of Canada, and we feel that an intervening court of appeal can take up that kind of work, leaving the final but more limited appeal to the Supreme Court of Canada on any important question of law that happens to arise.

We also felt that this would be a good time to attempt to improve the administrative law procedures that have heretofore prevailed in this country with regard to federal tribunals. As I am sure all honourable senators know, the federal tribunals in this country have been, if I may use the term, policed by the superior courts of the provinces for a great many years. This has been, in some respects, unsatisfactory, largely because of the fact that we have potentially ten different superior courts policing one federal tribunal. That can result, and has resulted, in a serious interference with the orderly functioning of these tribunals, because you can get conflicting decisions in the provincial courts throughout the country, and you can get harassment. If you attack a decision in one

province and are not successful, you can then attack it in another province.

Senator Connolly (Ottawa West): Are you thinking of the prerogative writs?

Mr. Maxwell: Yes, that is right, prerogative writs and injunction proceedings, and things of that sort. This, we felt, was an unhappy situation in which federal boards and tribunals must function, and the obvious answer seemed to us to be to put the jurisdiction into the new Federal Court. This we have done in a variety of ways which I shall explain, if called upon to do so. It has caused a great deal of discussion. We think that what the bill does makes sense, and we hope that we can convince you that it does make sense on this point.

In effect, we have left the ordinary prerogative jurisdiction with the trial bench, and we have built into the legislation a new review remedy which we feel will substantially simplify the claims of persons who feel they have not been treated properly by a federal administrative tribunal. Perhaps I should just say in this regard that to the extent that the new review remedy is not available then, of course, the prerogative remedies are available, but in practice we believe that the new review remedy will be available in virtually all of the cases that will arise with the possible exception of a writ of mandamus, which applies where somebody exercising a statutory office refuses for some reason to exercise it. That sort of problem does arise, but it does not arise frequently.

Senator Connolly (Ottawa West): What you are saying, in summary, is that you are substituting a statutory authority to deal with the things that normally heretofore have been dealt with by the prerogative writs?

Mr. Maxwell: That is right, Senator Connolly, but in addition we have broadened the jurisdiction to take care of what we thought were some obvious deficiencies in the remedies provided by the prerogative writs. We feel that if you cannot get justice under the new review remedy that we are establishing then there "just ain't no justice" in this country, because the jurisdiction of the court is quite broad and virtually unencumbered. It can look at findings of fact in cases where the tribunal has obviously proceeded in an arbitrary and improper manner.

Senator Flynn: Would you mention the section in which that is provided?

Mr. Maxwell: I am talking basically, Senator Flynn, about clause 28.

Senator Langlois: Do I understand that the jurisdiction of the provincial courts remains?

Mr. Maxwell: No, the jurisdiction of the provincial courts will not remain. That jurisdiction has been vested in the Federal Court.

Mr. Russell S. Hopkins, Law Clerk and Parliamentary Counsel: Exclusively?

Mr. Maxwell: Exclusively, that is right.

Senator Connolly (Ottawa West): There are some cases in which there is not exclusive jurisdiction. I have not my notes in front of me at the moment, but there is concurrent jurisdiction, is there not?

Mr. Maxwell: Yes, there is concurrent jurisdiction in certain kinds of cases, Senator Connolly, but in regard to the matter of superintending federal boards and tribunals the jurisdiction is exclusive.

Senator Connolly (Ottawa West): But the prerogative writs will still remain, and they will still run in respect of the Federal Court. You can still issue one of these writs and apply it to the Trial Division, and even to the Appellate Division?

Mr. Maxwell: Well, what you really have, Senator Connolly, is a brand new remedy of review that goes directly to the Court of Appeal. Incidentally, I should mention that the Court of Appeal will be an itinerant court. It will not be a stationary court. It will be a court that will move about the country, as has the Exchequer Court. It will mean that people will not have to come to Ottawa to enforce their claims. We concede that this is to some extent experimental, but we feel that it is something that is a requirement from the standpoint of the federal administration of justice. My guess is that it will not be too long before we find similar things developing in some of the provincial jurisdictions.

Senator Flynn: This review procedure covers all the prerogative writs.

Mr. Maxwell: That is right, it covers everything that there is now.

Senator Flynn: And more.

Mr. Maxwell: Yes, and more, that is right.

Senator Flynn: It is inclusive. You do not mention the prerogative writs anywhere else in the bill.

Senator Langlois: And you have it under clause 18.

Mr. Maxwell: Yes, they are mentioned in clause 18 of the bill. I should say that these clauses have caused a fair amount of comment. We have had a great deal of mail in the Department of Justice about these clauses from all sorts of people, although it has come mostly from university professors.

The philosophy behind clause 18 is to vest existing prerogative jurisdiction that is in the provincial courts now in the Trial Division of the Federal Court of Canada. We take it from the provincial courts, and we give it to the Trial Division. Then we go to the new Court of Appeal, and give to that court a broad review jurisdiction which embraces virtually everything that you find—

not quite everything, but virtually everything—in clause 18 and in clause 28, and that is a jurisdiction that takes you directly to the Court of Appeal. You do not have to go before the Trial Division; you go before the Court of Appeal.

Senator Flynn: Why would you give the prerogative writs to the Trial Division, and this review jurisdiction, which is an extension of the same remedy, to the Appeal Division?

Mr. Maxwell: Normally, you see, if you are attacking a board such as the Canada Labour Relations Board by saying it erred in its jurisdiction or it erred in law, or something like that, then we feel that an application for relief should go directly to the Court of Appeal, basically because of the time factor.

With respect to these federal tribunals we want the remedy to come from the courts. This is very important, in our view, in terms of the way in which our laws function. But, we do not want to hamstring the boards and tribunals in the performance of their duties.

One of the problems we have experienced at the federal level is that these boards are attacked before the trial judge, and that takes time, after which there is an appeal to the Court of Appeal, and that takes more time. Finally, there may be an appeal to the Supreme Court of Canada, and that takes even more time. Sometimes—and it has happened—the whole point of the proceedings before the tribunal has been lost to a large extent by virtue of the time factor involved in the enforcement by a citizen of his legal rights and remedies. We are seeking to avoid this by taking most of the attacks that can be brought directly to the Court of Appeal. You do not have to go to a trial judge in the first instance, but to the new Court of Appeal and then only on a matter of some considerable consequence would you receive leave to go to the Supreme Court of Canada.

Senator Flynn: The difference would be subtle though. I am thinking of the Canadian Transport Commission. In the event it refused to exercise its authority and I obtained a writ of mandamus before the Trial Division, that would go to the Trial Division. However, if they make a decision with which I am not satisfied and which may contain some elements of jurisdiction, I would then have to judge that I have to go to the Appeal Court.

The frontier between the prerogative of clause 18 and the power of review of clause 28 is not too clear.

Senator Langlois: You may have a choice of remedies.

Mr. Maxwell: There is no serious problem here, Senator Flynn. Quite obviously, if you take your proceedings for review before the Court of Appeal and there is nothing there to be reviewed you will be told nicely that your remedy must be before the trial bench. You then talk to a trial judge with regard to the matter.

This has been made to sound very horrific.

Senator Flynn: Would it be referred to the Trial Division, or would it have to start all over again?

Mr. Maxwell: I am reasonably certain that the rules of the court would be so evolved that there would be a referral technique. I, of course, cannot speak for the bench, but I really cannot think that this is the serious and horrific problem it is considered to be by some members of the academic side of our profession.

As a matter of fact, for the most part we have not had too much comment from the practising Bar, but there has been a fair amount from the academicians.

Senator Grosart: I am not a lawyer, but as a layman I am interested, naturally, in the right of appeal, particularly from federal boards or, for that matter, any boards.

You have used the phrases Appeal Court, Court of Appeal, new Court of Appeal and federal court. Would you distinguish them, if there is a distinction, for a layman?

Mr. Maxwell: I am probably referring to the same animal.

Senator Grosart: I wondered why you used the four names.

Mr. Maxwell: I apologize, but when I refer to the new Court of Appeal I am speaking of the Court of Appeal that is created by this bill and is new in the sense that none presently exists.

Senator Grosart: How would you designate the old courts of appeal?

Mr. Maxwell: I would normally refer to the Supreme Court of Canada only, because it is the only Court of Appeal. That is not its name, but it is an appellate court.

The Chairman: It is a court of appeal from the Exchequer Court.

Senator Grosart: But there are other courts of appeal.

Mr. Maxwell: There are provincial courts of appeal. I hope I have not confused you in that regard.

Senator Grosart: It is not difficult to confuse me in this area. As I say, I am not a lawyer. Are there any boards at the moment from which there is no appeal?

Mr. Maxwell: Yes. For example, the Canada Labour Relations Board is one from which there is no appeal of any kind. The only way in which that board may be challenged is through the prerogative remedies.

If and when this bill becomes law, in addition to the prerogative remedies there will be the new right of review under clause 28 of the bill. However there will still be no appeal as such.

When we lawyers refer to appeals we mean a right of appeal conferred in that terminology by a statute. There is no appeal apart from statute.

Senator Grosart: Unless you go to the foot of the throne.

Mr. Maxwell: Well, even there.

Senator Flynn: The words "tribunal" and "court" have the same meaning. However, no federal tribunals or courts exist now, other than the Exchequer Court of Canada and the Supreme Court of Canada. Just in case others would be created in the future, what is meant by the reference here to tribunal?

Mr. Maxwell: This legislation as it is written contemplates that it will deal with all federal tribunals. Incidentally, while you are quite right in saying that the word "tribunal" in its broad sense means court, it is not so in the broad context I am using. When I refer to courts I mean courts, which are somewhat different from tribunals as such. I am referring to tribunals that do not function as courts.

Senator Flynn: The Income Tax Appeal Board, for instance, could be classified as a tribunal?

Mr. Maxwell: That is correct.

Senator Grosart: You gave one example of a board or tribunal from which there is no appeal, the Canada Labour Relations Board. Are there others?

Mr. Maxwell: I am sure there are others. For example, there are tribunals within the framework of the Public Service Commission from which there are no appeals as such. Again they have to be attacked, if they are attacked, by way of *certiorari* and prohibition. Certainly the Canada Labour Relations Board is the most well known.

Senator Grosart: Why is it in this special position with respect to appeal?

Mr. Maxwell: I am guessing to some extent, but much federal legislation was drafted in the past in such a way as to prevent interference by the courts with the tribunals. An attempt has been made to insulate these tribunals from interference in many cases by the provincial courts. That is why some of this legislation contains provisions that were designed to prevent interference by *certiorari* and prohibition. The Government wished to avoid the possibility of the tribunals being interfered with and frustrated, in effect, depending on your point of view. This is why I am certain that there is no appeal from some tribunals. It is the desire that they virtually be a law to themselves.

That is not part of our thinking; we feel that there must be some manner of review. On the other hand, that must be balanced with a mechanism which will ensure that the boards are not frustrated.

Senator Grosart: Could your department furnish us with a list of these tribunals from which there is no appeal?

Mr. Maxwell: I am sure we can give you such a list. However, I am not sure it would ever be exhaustive.

Senator Connolly (Ottawa West): Senator Grosart, you may find some assistance in the schedules. Some 30 or more Acts are amended, many of which are related to such boards.

Mr. Maxwell: There is now a limited right of appeal from most of the boards referred to in the schedules. I think Senator Grosart is concerned with tribunals from which there is no remedy at all.

Senator Grosart: Yes. As a matter of fact I have some qualms about the phrase "interference by the courts". I think I understand the lawyers' basis of using the phrase. From the point of view of the rights of individuals before these boards, they would hardly regard it as interference to have a right of appeal. I would therefore be very interested in knowing the area in which a litigant has no right of appeal from a board that is not itself a fully judicial body, in the accepted sense of the division of powers between the legislature, the judiciary and the executive. It is a very important point, to my mind, because we are looking at our Constitution.

The Chairman: I do not think Schedule B covers your point.

Senator Grosart: It does not?

The Chairman: No.

Mr. Maxwell: As I conceive the question, I am not sure I understand the connection between this and the Constitution. I am not asking you a question, but I just do not see the connection at the moment.

Senator Grosart: The essential connection here is the division of powers, the balance of powers if you like, between the legislature, the judiciary and the executive. If there are boards, or instruments if you like, set up by the legislature or the executive, or both, which are exempt from the normal balance of power between the three levels, then this will be important in the restructuring of our Constitution, if it is to be restructured. To what extent do we find it acceptable that Parliament should set up quasi-judicial boards from which there is no appeal, in other words remove them from the normal functioning of the judicial system?

Mr. Maxwell: Speaking again purely personally here, I do not like that. Another board that comes to mind is the Public Service Staff Relations Board. That is another board from which there is no right of appeal.

Senator Grosart: And a very good recent example of that.

Mr. Maxwell: That is right. Speaking again personally and as a lawyer, I do not favour that sort of situation. This legislation, of course, is designed to meet that.

Senator Grosart: That was the point I hoped you would bring out.

Mr. Maxwell: It was designed to meet it, yes. But having met it, or at least attempted to meet it, we also do not want to err on the other side and get these boards so entangled with litigation of one sort or another that, in effect, they cannot really perform as the legislators thought they were going to.

Senator Flynn: There is a problem of balance.

Mr. Maxwell: Exactly, there is a problem of balance.

Senator Flynn: Administrative efficiency would suggest that sometimes you would refer matters to a quasi-judicial board, an administrative board with some discretion, but if there is a remedy like the one provided in clause 28 I think you cover the point raised by Senator Grosart.

Mr. Maxwell: We hope so. Admittedly there is a certain amount of trial and error involved, but we hope that we will have gone a long way to bring this more into balance, as Senator Grosart was suggesting, than perhaps has heretofore pertained.

Senator Smith: I wonder if I could ask a question as the other layman on the committee, in order to understand what we are getting at here. I put to you a hypothetical question, of course. Let us assume the CRTC made a very harsh ruling that had serious financial implications. Is there any form of appeal today, or will there be any form of appeal following the passage of this bill?

Mr. Maxwell: The answer to that is that there is a limited right of appeal now directly to the Supreme Court of Canada. When this legislation is passed there will be that remedy plus the right of review, which we think is a good deal broader than what is now given. Of course, the right of appeal will be in the first instance of the new Court of Appeal, the one established by this legislation, with a final appeal to the Supreme Court of Canada if leave is given. In addition to that right of appeal, there will also be this right of review, which will enable people to get at certain kinds of problems that I suspect they are not able to get at under the present right of appeal.

Senator Smith: Presently with regard to this kind of thing, is the appeal based only on points of law, or are the judgments on the whole implications involved in the decision appealable.

Mr. Maxwell: At the present time these rights of appeal are limited to questions of law.

Senator Smith: That is what I suspected.

Mr. Maxwell: I am afraid this is getting a little technical from the legal point of view. The fact of the matter is that a right of appeal on a question of law only is not unimportant, but it certainly does not enable you to get at, for example, findings of fact that were improvidently or improperly made. A tribunal is not governed by the rules of evidence. A tribunal can look to its own knowledge, its own expertise, upon which to make findings of fact.

Senator Connolly (Ottawa West): Sometimes it goes even further and takes evidence after the hearing and uses it.

Mr. Maxwell: Sure. One of the great vices—or perhaps I should not say vices, but one of the great difficulties with some of these boards is that they can fall into serious error by making findings of fact that there is really no justification to make. This is why the right of review, which supplements the right of appeal on a question of law, is a very important right.

Senator Smith: I can assume, then, in this hypothetical case that I have put of the CRTC, that this will be a very substantial improvement in righting so-called wrongs, or assumed wrongs.

Mr. Maxwell: That would be my opinion, yes.

Senator Flynn: I think it is important for the record to mention how the bill sees the review on the basis of a question of fact. I refer to paragraph (c) of clause 28, where a tribunal or board has:

based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

It would be interesting to see how the court interprets that. There may be some caprice by the court itself.

Mr. Maxwell: Well, we hope not, not in my terminology, but then I have to appear before it. I will say frankly that this is not cribbed from any other source. It was something we felt gave the court the required latitude.

Senator Grosart: Some concern has been expressed recently by laymen about the limitation of access to the Supreme Court of Canada. Will this bill to some extent remedy that by providing access to the Federal Court in cases where there has been recently a limitation of access to the Supreme Court?

Mr. Maxwell: I think in fact that will be so. My guess is that substantially less work will be found coming from the Exchequer Court, or the new Federal Court, to the Supreme Court of Canada. I think the work load will therefore become much better distributed, and I suspect the Supreme Court of Canada will have more time to devote to appeal work from the provinces. That would be my guess how this thing would work. I am using a crystal ball a bit here.

Senator Connolly: This is a little off the subject, Mr. Chairman, but I would like to talk to Mr. Maxwell about one thing which I think would be of interest to this committee. In the United States in the Supreme Court the people who appear are very restricted as to time. They file a factum and are given perhaps 20 or 30 minutes to summarize the facts and that is it. Apparently this is the only way they can handle their work load. Do you suppose that procedural development will eventually take place in our courts? There are cases where the argument goes on for not only days but sometimes weeks.

Mr. Maxwell: You are talking now, senator, about the Supreme Court of Canada?

Senator Connolly: Yes.

Mr. Maxwell: As you perhaps know, you can only get to the Supreme Court of the United States by way of having your *certiorari* application allowed. In short, the equivalent in Canadian terms is that you have to get leave to appeal. We have, of course, moved somewhat in that direction in this country. We may find that as the nation grows and litigation multiplies we will have to follow that tack and require people to get there only with leave. As a matter of fact, to some extent this legislation is the harbinger of that sort of thing because basically that is the way you will get to the Supreme Court of Canada from the new Federal Court established by this bill.

Senator Connolly: By leave of either court?

Mr. Maxwell: That is right. There would be no just absolute appeal as such. Now, I know the Supreme Court of Canada has considered the question as to restricting counsel and this sort of thing. I think there is a real reluctance on the part of the judges.

Senator Flynn: It is within their powers to establish rules.

Mr. Maxwell: Of course, Senator Flynn, we all know that if you appear there and you have nothing to say you will not be permitted to go on indefinitely saying nothing. There are ways and means by which judges control counsel in this way.

Senator Flynn: There are some indicators.

Mr. Maxwell: But, they have never been prepared up to the present to arbitrarily say that you can have half an hour and by that time a little light goes on, as in the Supreme Court of the United States, and you must sit down.

Senator Hayden: In the United States Supreme Court do you know whether the length of time is allocated? Is that an individual decision of the court in each appeal?

Mr. Maxwell: My impression is that it is pretty well standard. I did know something about this a few years ago, because we were trying to intervene in a case in the United States on behalf of the Canadian Government. I was told that our counsel could have 20 minutes to make a submission. They go very much by the written brief that is filed, and you are just given enough time to explain the high points of the brief that you submit to the court. It is a highly formalized procedure, and I am sure most of our practising lawyers hope that we do not get into that situation too quickly. Maybe in the course of evolution we may have to come to it.

Senator Flynn: There is prejudice, of course, and members of the court have already taken cognizance of the biases.

Mr. Maxwell: That is very true.

Senator Flynn: They may know something about the case before.

Senator Connolly: They do their homework.

Senator Flynn: If they do not you have to speak a little longer.

Mr. Maxwell: I understand that there is a little red or green light sitting in front, and I gather that the light comes on signalling the end. One light comes on when you have five minutes left and then a red one comes on and you must stop.

Senator Flynn: Perhaps this is in the realm of policy and maybe you do not feel obliged to discuss the matter, but many objections have been raised to the fact that the appeal division is formed of judges of the same court who have been working together and occasionally making decisions as trial judges and as appeal judges.

Mr. Maxwell: I am going to answer very directly, because I am a member of the Bar of the Province of Ontario where essentially we have the same system. There are eminent lawyers there from this province who know this is exactly the system which prevails here. You have a Supreme Court of Ontario which is composed of two branches, the High Court of Justice and the Court of Appeal and when you are appointed to one you are made *ex officio* a judge of the other.

Senator Flynn: Both ways?

Mr. Maxwell: Of course, in the Province of Ontario it very seldom happens. In point of fact, a judge in the Court of Appeal can sit if asked to by the Chief Justice as a trial judge, and a trial judge can move up and sit as a member of the Court of Appeal. The system we have elaborated in this bill is strangely similar to that system, which I think is a very good one, at least when you are starting out and when you are not quite certain how the work load is going to flow. You are not quite certain how many judges you are going to need. This gives a flexibility that we felt was desirable in the initial stages. I am sure that it will not remain this way forever, and I feel it is not necessarily a serious problem. I know there has been some expression of opinion that it is a bad thing. My guess is that if it turns out to be a serious problem the government will amend it.

Senator Flynn: I may be speaking as a Quebecer, but it is the other way around in my province. The members of the Appeal Court never sit as trial judges, although a member of a Trial Division may sit as an *ad hoc* member of the appeal.

Mr. Maxwell: There are various forms in the provinces. Quebec has one system, whereas in some provinces they are completely watertight and you are a member of one court and not of the other. However, I do not feel that what this bill is attempting to achieve is necessarily

going to be a serious problem. If it does become one I am certain that the Government of the day whatever it happens to be, will correct the situation. I certainly think that is worth a try.

Senator Flynn: There is no doubt in any event that the member in an appeal court would feel more independent if he never had to sit as a trial judge.

Mr. Maxwell: Perhaps if one were talking about the most desirable end I suppose they might be entirely separate, but for the time being I think there are some advantages in having this flexibility which our system permits. I suppose it might be that they should be entirely separate, but I think there are some advantages in having this flexibility that this system permits, in the initial stages, until we see what we are up against in point of practice. We are a pragmatic government.

Senator Flynn: I see that the new members who will be appointed will retire at the age of 70, whereas those who were appointed before the act, will remain until 75. I suppose it is an indication that we may see an amendment to the British North America Act pretty soon.

Mr. Maxwell: You may see a lot of amendments to the B.N.A. Act.

Senator Flynn: We may see the age of retirement brought down to 70 for all members of the judiciary appointed by the federal Government.

Senator Smith: As well as members of the Senate.

Mr. Maxwell: I would say that, on balance this is the trend.

The Deputy Chairman: Are there any further questions, honourable senators?

Senator Flynn: No, but I understand that next week this committee will have a brief by Mr. Stephen Scott. I think it would be very useful if Mr. Maxwell could be in attendance at that time, to comment on the objections raised in this brief.

Mr. Maxwell: I would be very glad to be here.

Senator Langlois: We may have at this time further questions to put to Mr. Maxwell.

The Deputy Chairman: We have circulated the brief by Professor Stephen Scott, who is in the law faculty of McGill University and is a lecturer on constitutional law at McGill. In his brief he has proposals for certain amendments to this bill. He wishes to appear before this committee and be heard, and I think we should hear him. Perhaps we should meet on Thursday, the 26th November at 10 o'clock, as other committees meet on Wednesday. It would give us a free morning and enable good attendance. We would hear from Professor Scott and members of the committee could question him on his proposals. We would be delighted if Mr. Maxwell could be in attendance so that he could also deal with the

proposals and assist the members of the committee in dealing with the proposals and as to what conclusions we should arrive at.

Senator Connolly: Could Mr. Maxwell tell us whether Professor Scott appeared before a committee of the House of Commons?

Mr. Maxwell: I do not believe he did, Senator Connolly. I think we had some submissions in writing from him at one stage. His name is familiar to me. We had many submissions over the months in which this bill was under consideration. I am sure Professor Scott wrote to us on one or two occasions and we dealt with this, or thought we dealt with this.

Senator Smith: This question may not be relevant. It seemed to me that the questions started rather early this morning, and I had a question in mind, as to whether Mr. Maxwell had completed the statement he thought would be useful for the lay members of the committee to have complete? As far as I know it was complete, but I do not know.

Mr. Maxwell: Actually, I had not formulated anything special, really. I was trying to hit what I thought were the highlights of this piece of legislation, from the standpoint of the committee's benefit.

I might mention that we have gone some wee distance to give this court an increased jurisdiction in some areas—for example, in aeronautics.

Here again to some extent we are admittedly experimenting with jurisdiction. We have found over the years, that there would be many advantages in having such matter as airplane disasters covered. We have the odd such disaster and I am sure it is inevitable. We could have jurisdiction in regard to such matters in a Federal Court. Sometimes one finds that there are suits all over the country, against airlines, and it is a chaotic situation. Sometimes the federal Government is implicated for one reason or another, not necessarily because there is an army aircraft involved but perhaps because of some improprieties at an airport or something of that sort. We thought it would be useful, from the standpoint of litigants, to be able to get their cases all together in the one tribunal.

Senator Flynn: Is this exclusive?

Mr. Maxwell: No, it is not exclusive, it is not exclusive, it is concurrent.

Senator Flynn: Like marine law.

Mr. Maxwell: We felt it would be a useful thing. We had some criticism of this. On balance, my feeling is that this is a desirable thing to try to achieve. If it proves to be unsatisfactory, I am sure the government of the day

will change it. I feel it is worth experimenting with and from my point of view I cannot see anything wrong with it.

Senator Grosart: Mr. Maxwell, I am sure you have given a great deal of consideration to the name of this court. It seems to me that certainly, offshore and in other jurisdictions, it is bound to create some confusion. The citation, for example, of a decision of the Federal Appeal Court would appear to suggest on the surface that this was the final court of appeal in Canada. You use almost throughout the phrase and throughout your evidence the phrase "Federal Appeal Court". This is of course only one division of the court. Has this problem of the name arisen in your discussions?

Mr. Maxwell: I can say frankly that the matter of the name of this court was given a lot of consideration, not so much by myself but by others. It occupied a lot of time. Various things were tried out and this was the thing they settled on. I can only say that there may be some confusion. It is rather similar to the terminology there is in the United States. It might produce some confusion, but basically these courts are domestic courts and not really for the outside. They are really for us and if people become confused that is too bad. I do not think too many people would confuse the United States Supreme Court with the Federal Court of Appeal that they have throughout their country. It seems to work, Senator Grosart.

Senator Grosart: Just laymen.

Mr. Maxwell: It is not very mandatory.

Senator Connolly: Would you be sorry to see the word "exchequer" go?

Mr. Maxwell: I am, personally, but on balance it is a word which does not have much meaning for the average person today. It has a historical meaning, really. I have a feeling that it was a word that conjured up, in the minds of the practitioner who perhaps did not practice too much in the federal courts, something horrific, from his point of view.

Senator Connolly: The jurisprudence that it has developed, where applicable, will still be applicable?

Mr. Maxwell: Oh yes. As a matter of fact the Exchequer Court is continued, it really is not abolished. It is continued with a new name and added to, and so on.

The Deputy Chairman: Honourable senators, we will adjourn until Thursday morning, November 26. Professor Scott will be in attendance and Mr. Maxwell will be here also.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

THE SENATE OF CANADA

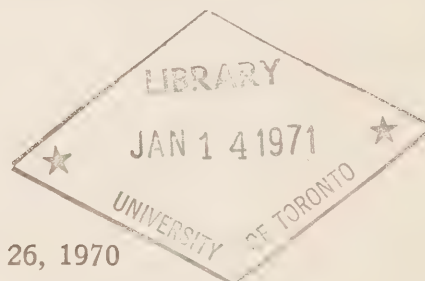
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

No. 2



THURSDAY, NOVEMBER 26, 1970

Second Proceedings on Bill C-172,

intituled:

“An Act respecting the Federal Court of Canada”

(For Appendices and Witnesses:—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hollett
Aseltine	Lang
Bélisle	Langlois
Burchill	Macdonald (<i>Cape</i>
Choquette	<i>Breton</i>)
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McGrand
Croll	Méthot
Eudes	Petten
Everett	Prowse
Fergusson	Roebuck
*Flynn	Smith
Gouin	Urquhart
Grosart	Walker
Haig	White
Hayden	Willis

*Ex officio member

(Quorum 7)

Orders of Reference

Extract from the Minutes of Proceedings of the Senate
of Monday, November 16, 1970:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Lamontagne, P.C., for the second reading of the Bill C-172, intituled: "An Act respecting the Federal Court of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, November 26, 1970

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Urquhart (*Deputy Chairman*), Burchill, Connolly (*Ottawa West*), Eudes, Everett, Fergusson, Flynn, Gouin, Haig, Hollett, Langlois, McGrand and Walker. (13).

The following Senators, not members of the Committee, were also present: The Honourable Senators: Lafond, Macnaughton, McDonald.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee continued its consideration of Bill C-172, intituled: "An Act respecting the Federal Court of Canada".

The following witnesses were heard in explanation of the Bill:

Professor Stephen A. Scott, Professor of Constitutional Law, Law Faculty, McGill University, Montreal;

Mr. D. S. Maxwell, Deputy Minister of Justice, and Assistant Attorney General.

On Motion of the Honourable Senator Langlois it was ordered that the two briefs presented by Professor Scott, entitled "Proposals for Amendments to an Act respecting the Federal Court of Canada" and "Bill C-172: An Answer to Constitutional Objections", be printed as appendices to these proceedings. They appear as appendices "A" and "B" respectively.

At 12:05 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs Evidence

Ottawa, Thursday, November 26, 1970.

[Text]

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to give further consideration to Bill C-172, respecting the Federal Court of Canada.

Senator Earl Urquhart (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, this morning we will give further consideration to Bill C-172, an act respecting the Federal Court of Canada. Last week Mr. D. S. Maxwell, the Deputy Minister of Justice and the Deputy Attorney General of Canada, appeared before us and gave a very clear and informative analysis of this bill. We are most pleased that he is able to be present again today.

Honourable senators, you will recall that at our last meeting I advised the committee that Professor Stephen Scott, who is Professor of Constitutional Law at McGill University, expressed a desire to appear before this committee. He forwarded in advance a brief containing certain proposed amendments to Bill C-172. This was distributed to the members of the committee, but if any member should not have one we have additional copies which we will gladly distribute.

Professor Scott is present now. On behalf of our committee I welcome you, Professor Scott, to this meeting and would now ask you to kindly present your views on Bill C-172.

Professor Stephen A. Scott, Professor of Constitutional Law, McGill University: Thank you, sir. First of all I would like to thank honourable senators for the courtesy of hearing me. This is the first time I have had the privilege of appearing before the Senate or one of its committees and I hope I can be of some assistance.

I may add to what your chairman has just said that I had been surprised to find that in some quarters there were some doubts as to the constitutional validity of certain aspects of this bill. With this in mind I have produced a brief paper, which I call "Bill C-172: An Answer to Constitutional Objections", which I gave to the clerk this morning, and I do not know whether it has yet been made available.

The Clerk of the Committee: It is being printed.

Senator Langlois: Is this the same document as we have?

The Deputy Chairman: No. This is an additional one to which he is referring now.

Senator Langlois: If it is the one the witness is going to discuss this morning we should have a copy of it.

The Clerk of the Committee: It is being printed and it will be available in a few minutes.

The Deputy Chairman: You have a copy of his original brief.

Professor Scott: This is a supplementary answer to certain doubts that have been entertained, which you may consider at leisure. Indeed, I need not even discuss that at all unless you happen to be particularly interested now.

I will address myself to the points of my brief. By and large I think the bill is not a bad one at all. In fact, I think it is quite skillfully drafted. No one engaged in drafting a piece of legislation would have produced exactly the same bill. I myself might have been a little more liberal on some points in favour of concurrent rather than exclusive jurisdiction, but I do not think that is necessarily very serious, provided one is careful, it seems to me, to make sure that counsel are not faced with two courts enjoying exclusive jurisdiction in cognate areas and finding that they are not quite sure whether they should sue in one, or they are quite sure but turn out to be wrong and have then to start at the bottom of the legal process again, after perhaps limitation of time has run out. Quite a few of my proposals are addressed to this issue and there are a few other points.

Perhaps I will start with my proposed section 17(6), which is to be found at page 2 of the brief. This is a general provision similar to provisions found in the legislation of various provinces, not least the Province of Quebec, to allow the impleading of persons substantially involved in the case incidental to the principal matters litigated. This is particularly important in Crown proceedings, as I think can be seen in situations such as this. The Crown proceeds against one of its debtors under the bill; the Crown proceeds against a garnishee under the bill; in each case it can obtain judgment, but as between the debtor and the garnishee it does not seem to me possible for the court to give judgment, so that while the garnishee may be made to pay the Crown, he has not a conclusive answer, certainly not *res judicata*, against his own creditor who is, of course, the Crown's debtor. That is one sort of situation.

Another situation might arise, for example, where I am a passenger in a car that has a collision with a government vehicle. I sue the Crown under the bill in the

Federal Court; I sue the Crown's driver under the bill; that is probably possible under the bill if he is taken to be an officer of the Crown and so on. What I cannot do is sue my own driver in the same proceedings, so that I will have to conduct separate proceedings at considerable expense in another court over the same matter, pay for the same evidence to be taken twice; conduct, in other words, two separate trials. Indeed, the Federal Court may say that my driver was responsible and dismiss my proceedings in the Federal Court, whereas the provincial court may say, "The Crown driver was responsible. Go sue in the federal court". I may get a dismissal in both cases, each on the ground that the other was at fault. This is, of course, a necessary consequence of forcing two related claims to be tried in different courts.

The Deputy Chairman: This is where you would want to join a third party?

Professor Scott: This is where third parties are joined.

I therefore set out on page 2 the proposed subsection (6) of clause 17. In the event that anyone might take objection to this, in the supplementary brief, which you will get shortly, I submit that this is, in my opinion, constitutionally valid, at least arguably constitutionally valid. The only case that might be thought to oppose this can, in my view, be either distinguished or said to have been subsequently overruled, in principle at least, by the Privy Council. So much for third party proceedings.

Clauses 18 and 28, on judicial review of the acts of public officers, have, of course, been those that have given rise to the most widespread interest in this bill, not merely because they give judicial review to the Federal Court on most of the traditional prerogative remedies and other forms of relief, but because they exclude the jurisdiction of the provincial superior courts. This is an area where, as I say, I would have been just as happy to see concurrent jurisdiction, but I do not think that this is very serious. I believe it is perfectly reasonable to adopt the other view; I think the Government has thought that it would like to see exclusive jurisdiction here, and that seems to me a fair policy, and it would then be reasonable to make this work as well as possible.

Under the Government scheme two sorts of difficulties arise, in my view. One is the sort of conflict that can arise between the Federal Court of Appeal and the Trial Division of the Federal Court, because the Federal Court of Appeal is given exclusive jurisdiction in some of these cases of judicial review, and the trial division in others, and it is not absolutely clear at all times where proceedings should be instituted. Therefore, in my view it would be desirable to amend clause 28, as I indicate at the bottom of page 2 of the brief, so as to ensure substantially this: that if an application is commenced in the Federal Court of Appeal, which has exclusive jurisdiction over these applications, for relief against certain federal tribunals where the challenge is on certain grounds, where the application is made for review to the federal Court of Appeal, then the federal Court of Appeal has all the jurisdiction also of the Trial Division in the event that it should turn out that the application is unsuccessful on those exclusive grounds on which the Appeal Court has jurisdiction.

The Appeal Court attracts to itself the jurisdiction of the Trial Division so that it may deal with the entirety of the issues that arise, but also so that it be allowed to refer any issue to the Trial Division for trial; so you will not have a situation where counsel has applied to the Federal Court of Appeal and finds his case dismissed because the proper kind of review he should have asked for was an injunction or a prerogative writ in the Trial Division; whereas, if the proceedings start off in the Trial Division and it turns out to be one of those cases proper for the Federal Court of Appeal, it seems to me that the Trial Division should have power to order the proceedings to be continued by the Court of Appeal as proceedings of the Court of Appeal; in other words, to refer them back and forth according to the jurisdiction, so that you do not get dismissals on grounds of jurisdiction, having taken proceedings in the wrong court. This is a consequence of having divided up, if you like judicial review into the hands of two exclusive parts of the Federal Court itself. But, there are also certain conflicts which can arise between the exclusive rights of review of the Federal Court of Canada and those of the provincial courts. I have adopted, at the bottom of page 3 and at the top of page 4, a set of clauses which have substantially the effect of preventing a situation where a case begun in the wrong hierarchy of courts will be dismissed, let us say, by the Supreme Court of Canada in order that it should be commenced down below in the other hierarchy of courts. In my view, if nobody objects to the jurisdiction of the provincial court, or the objection is overruled, then the provincial court should be allowed to hear the proceedings, notwithstanding that it might have been a case which would rightly have been in the exclusive jurisdiction of the Federal Court.

I think some senators may be familiar with a curious pair of cases which I believe were decided in the 1940s, involving the then Minister of National Health and Welfare, Mr. Claxton, where complaints were made that he was denying some doctor the narcotics he required. Proceedings were started in the provincial Superior Court which dismissed them on grounds that it should have been heard in the Exchequer Court, and when he began proceedings of a slightly different character in the Exchequer Court, they were dismissed by the Exchequer Court on the grounds they should have been tried in the provincial Superior Court, or at least not in the Exchequer Court.

At all events, in my view, the marginal cases should be left to the provincial courts. Where they say they have jurisdiction, and whether or not they do, it ought to be enough at least to found the jurisdiction in the circumstances.

I also suggest as part of the scheme something similar to what exists in Quebec as between different courts in the province; that is to say, where one court finds itself without jurisdiction it refers the record to the other court to be continued therein as proceedings of the other court. Instead of having a dismissal outright you have a reference to the record to the competent court.

I propose that, when the Federal Court dismisses proceedings and refers the record to the provincial court, the provincial court be left to decide for itself whether the

proceedings should be continued as its own. It may think that this Act is authority enough—I do—and it may order accordingly. If it does not think it has sufficient authority, then, in that case it will get authority from its own legislature. At all events, I propose that there be a scheme whereby, instead of having dismissals outright, you could transfer the record to the properly competent court.

My next proposal, the clause for which you will find at page 5 of my draft, allows the Trial Division to have jurisdiction in certain sorts of federal cases for what can reasonably be called federal cases which do not come within the present scope of its jurisdiction. For example, if today you wish to take a *quo warranto* against a member of a Privy Council as being incapable of holding office, under the present scheme this could not be done in the Federal Court of Canada, because his office is created by the British North America Act of 1867 and not by any Act of the Parliament of Canada. Similarly, there are pre-Confederation offices of various kinds. I have one or two in mind and I do not want to provoke any litigation in the case in question. The case I have in mind is a pre-Confederation office and it is not at all clear whether the officer in question is a federal officer or a provincial officer. He appears to be treated as being a federal officer. In my view, cases on pre-Confederation law should be allowed to the Federal Court, and, similarly, such British statutes extending to Canada as are still in force in Canada and are under federal legislative jurisdiction to amend since the Statute of Westminster; in other words those subject to repeal by the Parliament of Canada. I would allow in all these cases a concurrent original jurisdiction Trial Division.

My second to last proposal is to be found at page 6 of the brief. Here is a case where you can see the jurisdictional problems quite well. A soldier may be taking, let us say, habeas corpus proceedings on the grounds that he is being illegally detained in a military jail, which may be in Germany. His contention is, by law, that he has ceased to be a member of the armed forces or it may be that he was illegally transferred abroad because he didn't have the obligation to go abroad. He is denying that he is, in contemplation of law, a member of the Canadian Forces serving outside of Canada. Yet, as the clause of the bill now stands he seems to me to be in a position of having to allege that he is a member of the Canadian Forces serving outside Canada in order to have the jurisdiction for the habeas corpus to be available to him in order that on the habeas corpus proceedings it should be held that he is not, in contemplation of law, a member of the Canadian Forces serving outside Canada. If he got the habeas corpus as the law now stands and if it should be decided that he was not, in law, a member of the Canadian Forces serving outside Canada, the dismissal would have to be for lack of jurisdiction. In other words, the merits of the case could not be decided and the court could not make an order on it. The writ would be dismissed for lack of jurisdiction because, under the decision of the court, there would have been no jurisdiction to try the case at all, he being not a member of the Canadian Forces serving outside of Canada. I suggest that a provision be made similar to those I proposed for

elimination of jurisdictional conflicts earlier in the form I have given on page 6.

One minor matter—less important, perhaps, at present than it might become when federal authority may be more exercised abroad—is the problem of the process of the Federal Court of Canada to issue abroad. Wherever you may say that the federal Government is in fact exercising jurisdiction abroad, the present provision, in clause 55(1) of the bill allows the jurisdiction to extend to places where legislation enacted by the Parliament of Canada has been made applicable.

In fact the action may be executive action and not legislative action and there may be common law cases where the superior courts would be quite entitled to exercise jurisdiction. I suggest that clause 55 of the bill be amended to allow what I have suggested at the bottom of page 6 of my draft, that is to say, allow the process to run to any place where the superior courts at Westminster might have run. I gave you a case called *Ex parte Mwenya*. That had to do with an African protectorate but in the history given there you will see for example on one occasion a writ of habeas corpus was issued into Canada in connection with an escaped slave from the United States by the name of Anderson.

While I think that at common law the process of superior courts of dominions might not be able to issue outside the dominion, that of the superior courts at Westminster could in fact run in certain cases; and I think that we could leave to the judicial authorities the right to say where outside Canada the process of the Federal Court could properly run.

That, sir, concludes my resumé of my brief. If you would care to ask me any questions about it, I would be glad to reply.

The Deputy Chairman: Honourable senators, you have heard a detailed and thorough explanation of the brief as presented by Professor Scott of McGill University. Are there any particular questions which honourable senators should like to direct to Professor Scott on his brief?

Senator Flynn: I suppose it would be in order for Mr. Maxwell to let us have his reaction to the proposals made by the witness.

The Deputy Chairman: How would you like to proceed now? Would you like to ask Mr. Maxwell certain questions or would you like him to deal generally with the main points of the brief of Professor Scott? What is your wish?

Senator Flynn: I think he should deal with the points raised by Professor Scott, in the order in which he has presented them.

The Deputy Chairman: Is that the wish of the committee?

Hon. Senators: Agreed.

The Deputy Chairman: Mr. Maxwell, you have the floor.

Mr. D. S. Maxwell, Deputy Minister of Justice and Deputy Attorney-General: Thank you, Mr. Chairman.

Honourable senators, the first point which Professor Scott made in his oral presentation dealt with the matter of pleading third parties in Crown proceedings. This is one of the tortuous areas of the Federal Court structure. It is a matter that has caused us a great deal of concern in the Department of Justice. Certainly, if it were thought that it was open to the Parliament of Canada to deal with a total subject matter, that is to say, claims between subjects over which or in respect of which the Crown, the Parliament of Canada, cannot legislate, we would have done so. But we did not believe that there was constitutional power to do that. Indeed, we think it has been authoritatively decided to the contrary and this is why we refrained from putting that sort of provision into this bill.

I understand there is an additional paper prepared by Professor Scott dealing with constitutional issues. I have not really had a chance to read it. I simply wanted to say to honourable senators that this is the view upon which we have proceeded. We think it is right and therefore I would feel, personally, that my advice would have to be that a provision along the lines proposed by Professor Scott would be *ultra vires* the Parliament of Canada.

The next point that Professor Scott dealt with was the relationship between the Trial Division of the Federal Court and the Appeal Division. He is concerned, as a number of people have been concerned, about how in fact those two courts are going to function together. You commence a proceeding in the Trial Division, let us say, and then you are told that there is no jurisdiction there, that you properly should have proceeded in the appeal branch of the court. I for my part do not believe that there is any serious problem in that regard because, as I conceive this statute working in fact, there will be rules of practice, that will prevent referrals from one branch to the other, to deal with that kind of problem.

I might refer honourable senators to clause 46(1)(b) which permits the judges of the court to make rules "for the effectual execution and working of this act and the attainment of the intention and objects thereof." It is a very broad power and I frankly do not believe that there is any problem in this regard at all.

When you start concerning yourself with how the Federal Court is going to function, in relation to the various superior courts in the country, of course there may be some problems there. They are difficult to discern at this stage. Personally, I think we need some more experience, if there are problems. We have added a good deal of concurrent jurisdiction to the Federal Court in this matter, for example in the subject of aeronautics. I do not really see how there will be any great problem. If there is concurrent jurisdiction, then of course you can proceed in either court. This bill has been criticized by some because we have given increased concurrent jurisdiction. On the other hand, I think Professor Scott's view of the matter is that he would like to see more concurrent jurisdiction and less exclusive jurisdiction. That is another point of view. We have tried to take exclusive jurisdiction where the problem involves an attack on the exercise of federal statutory powers, we feel that that is the kind of matter that should be dealt with in the federal tribunal to the exclusion of the provincial tribu-

nal for the simple reason, of course, that you have ten superior courts in this country at the provincial level and it is rather onerous and difficult to have a single federal authority being subjected, in theory and sometimes in practice, too, to a jurisdiction that is so multiple—ten possible tribunals, all separate and distinct, able to supervise the one federal board, such as the Canada Labour Relations Board or some other board. Indeed, any exercise of federal statutory powers. That is why we moved in the direction of exclusive jurisdiction when dealing with the supervisory power.

But in other areas we think that there is a proper role for a concurrent jurisdiction, and we have used that with regard to aeronautics, limitation with regard to promissory notes and bills, and works and undertakings extending beyond the jurisdiction of a province and so on.

On the question of the Canadian forces abroad, I want to say that provisions of this bill in this regard are really a continuation of provisions that have been in the law for quite a long time now. It is an extraordinary jurisdiction, because it is, of course, extraterritorial. One would not expect to legislate extraterritorially in an unrestricted way. If you are going to legislate extraterritorially you have to do it in reference to something about which you can legislate properly, such as, for example, the Canadian Armed Forces. To take Professor Scott's example of the person who contends that he is not a member of the forces, I frankly do not know on what basis we could possibly justify legislating on that subject. If the man is a member of the forces and is being improperly incarcerated, I would say that, yes, that is a proper thing for us to legislate about. But if he is not a member of the forces, then I should have thought that any remedy he might have would have to be a remedy found within the legal framework of the place where he is being incarcerated, and I just do not think that would be an acceptable approach to take in federal legislation.

Again, on the matter of extending the jurisdiction of the processes of the court in the way in which Professor Scott has suggested, I frankly feel that it is unlikely that Canada is going to attempt to spread its dominion in a sort of colonial fashion without having some statute of Parliament authorizing this. I think the British analogy is interesting, but I do not think it is relevant in our case.

Of course, it is true that Rhodesia was a protectorate of Great Britain, and the case that he cites deals with that situation. It is true that for many years the British courts did deal with situations arising in the United States—the famous case of Penn and Baltimore was one, and there were many others; but in these times I just do not think that it is relevant, necessary or, indeed, desirable to extend the jurisdiction of this court in the way in which he would recommend. I frankly think that that is not relevant.

I do not know that I have left out anything. If I can help any of the senators with regard to what Professor Scott has proposed, I will be glad to do so.

The Deputy Chairman: Honourable senators, are there any questions you wish to ask Mr. Maxwell relating to the views expressed by Professor Scott? If not, perhaps

Professor Scott would like to make a brief comment on what Mr. Maxwell has said about Professor Scott's brief and the points raised in it. I do not wish to get a controversy going between you two, but I think I should give you the right of reply, and perhaps that will be it.

Professor Scott: As regards the constitutional objections to third party claims, I am not convinced, as I said, that the question is quite as settled as Mr. Maxwell might think. I would suggest, why not put it in and let the courts decide it. Perhaps Mr. Maxwell may be tempted, if I offer to represent him without fee in the Supreme Court, to uphold this.

Mr. Maxwell: I am going to hold you to that.

Professor Scott: I am perfectly willing to be held to that. I will ask for my expenses, but no more, if you want to put that in and see. It does not seem to me that the Parliament of Canada must immediately shrink every time anyone says "constitutional objection". I certainly know that the legislatures of the provinces are not taking that attitude but are legislating left, right and centre in every description of matter which all kinds of authorities have said are exclusively federal, including, just to take one example, divorce and the capacity to remarry after divorce.

So far as rules of practice being enough to eliminate conflicts between divisions of the court, I would just say that the act speaks of exclusive jurisdictions in the Federal Court Trial Division and in the Federal Court of Appeal. While rules of practice can go very far, I cannot see them as being justified in varying in any way that which the Act has said; and, if the Act says there are two exclusive jurisdictions, then it seems to me that that is the end of the matter and nothing that the rules of practice can say can vary that. In fact, I thought about the breadth of that clause before I made these proposals, but it seemed to me that one should eliminate any possible jurisdictional conflict.

My problem with respect to the member of the forces is that this is not a case where any Tom, Dick or Harry is suing for habeas corpus in a Federal Court of Canada. In this case of the person is *de facto* a member of the Armed Forces. Indeed, Mr. Maxwell in his bill speaks of alleged federal tribunals and so on, persons allegedly acting as authorities, and in this case the Canadian Forces are purporting to keep the person in as a member of the Canadian Forces. That is the basis of the constitutional jurisdiction. He is apparently, and *de facto*, a member of the Canadian Armed Forces; but in law he says he is not—not validly—a member of the Canadian Forces. It is, of course, true that, whenever anyone acts illegally, he is not a public officer, you may say, in some ways, but a common wrongdoer, a common tort-feasor; and the objection to federal jurisdiction based on his being not actually a member of the Armed Forces but only a *de facto* member would extend to federal jurisdiction over any kind of judicial review where the public officer acts *ultra vires* and is therefore simply an individual wrongdoer.

My proposal on the subject of extraterritoriality of process is not in fact to allow the Federal Court simply

to go extending its process out of the country by itself whenever it feels like it, but merely to review executive action which may have been taken outside the country; where, for example, someone is being detained outside the country in connection with deportation, or something like that, and where there is actual federal action outside the country; and this is simply to allow the courts to follow the Crown in the same way that the Americans meant when they spoke of the constitution following the flag. In other words, does the constitution follow the flag? Here the question is, do the courts follow the Crown? My suggestion for this extra territorial process is that the judicial jurisdiction be allowed to follow executive action.

Actually, I am not as unsympathetic—I will just add this—to the exclusive jurisdiction as Mr. Maxwell may think, but what I think is necessary is this; if you have exclusive jurisdiction you should add the sort of thing I propose to prevent conflicts. If you want exclusive jurisdiction, then you force conflicts, and if you force conflicts it seems to me that you have the responsibility to eliminate them.

Senator Flynn: Mr. Chairman, as far as this argument of the witness saying that because the Act confers exclusive jurisdiction to the Appeal Court and the Trial Division, that this would prevent a court from adopting any rule for the referral of a case which would have been introduced in the wrong division, I must say I cannot follow his argument. The exclusivity provided in the Act is not as between the Appeal Division and the Trial Division but with respect to any other court. The Trial Division shall have exclusive jurisdiction, that is exclusive with regard to the other superior courts of the province in some cases, and furthermore it says it has concurrent jurisdiction with the other superior courts. I mean the exclusivity here has no reference to the Appeal Court, and I cannot see why there should not be a rule that if you start in the wrong division—let us say in the Appeal Court, for example—the Appeal Court would not refer the matter to the Trial Division or the Trial Division would not refer the matter to the Appeal Court.

Professor Scott: The problem is subsection (3) of section 28. That reads as follows:

Where the Court of Appeal has jurisdiction under this section to hear and determine an application to review and set aside a decision or order, the Trial Division has no jurisdiction to entertain any proceeding in respect of that decision or order.

Senator Flynn: It has no jurisdiction to entertain, I agree, but at the same time the same thing applies to the Trial Division. But why should there not be a provision that when the Trial Division finds it has no jurisdiction to entertain a proceeding, it could refer it to the Appeal Division? Would you say that it is entertaining jurisdiction just to refer a matter to the proper court?

Professor Scott: Well, it is not so much that. It is that the whole decision becomes subject to its exclusive jurisdiction even when, for example, there are other grounds on which it may wish to exercise the jurisdiction than those permitted by clause 28(1) which are limitative.

There might be other grounds in the matter. In other words, I think that two cognate forms of review should be in the same hands, and if they are not in the same hands, it should be clear that whoever's hands they come to can either deal with it or refer it to somebody else.

Senator Flynn: This may be just a matter of clarification, but I am not convinced there is really a bar there to a referral by any court to the other court.

Professor Scott: Why not make it explicit, then? Because the proposed section makes it very clear that there is.

Senator Flynn: Maybe our own legal advisor would like to comment on that. What do you think, Mr. Hopkins?

Mr. Hopkins: I would be inclined to agree with Mr. Maxwell that a great deal could be accomplished under, I think, 46(1)(b) to soften any apparent hardship in the actual law as stated here procedurally. It appears to be largely unlimited so far as the procedure of the courts is concerned and it would apply both to the Appeal Division and the Trial Division.

Mr. Maxwell: If I might interject here for a moment, I should point out that the scheme of the rules that clause 46 contemplates is that there will be rules governing both the Trial Division and the Appeal Division, and, of course, all the judges in both divisions make all the rules. These things are not going to be worked out in water-tight compartments; they will be worked out having in mind, of course, that there may be some difficulties to the practitioner that the rules will have to deal with. We are conscious of the fact that there may be the odd case where somebody will start his proceeding in the wrong division but certainly if that case gets off on the wrong foot it will be referred to the right division. We are dealing here with one court having two branches; we are not dealing with two separate water-tight tribunals, and the rules will be a unified code of rules dealing with both.

Senator Connolly (Ottawa West): In a case like that, if a proceeding was started in the wrong division, Mr. Maxwell, you would contemplate the rules' providing that the division in which it was started could refer it to the other division.

Mr. Maxwell: Yes.

The Deputy Chairman: That is the idea.

Senator Flynn: If it is the Court of Appeal, there is no problem, and if it is the Trial Division and there is an error, then it is subject to review by the Appeal Division.

Professor Scott: What if it is a case where there is a ground for review which could go to the Federal Court of Appeal and then under clause 38 the whole decision is put outside the Trial Division's jurisdiction because a ground could be made under clause 28, but what you happen to want to do is to attack it on some other ground or apply for some other kind of relief than the Federal Court of Appeal can grant? Because it is allowed

only a few kinds of relief, not an injunction, for example. If a decision can be attacked on any of the grounds in clause 28, then it must go to the Court of Appeal on an application, and the Court of Appeal cannot give an injunction. Nor in principle can it refer it to the Trial Division because it is within their own jurisdiction under clause 28.

Mr. Maxwell: In answer to that question, I have the greatest difficulty in visualizing the situation where you would want relief beyond the right of review. Where there is a right of review to the Court of Appeal, it is the broadest kind of review that I know of in terms of the law that now exists, and certainly the Court of Appeal does have jurisdiction to deal with it under clause 28, I cannot imagine why that would not be wholly adequate for the purpose of an attack on a federal board or something like that.

Professor Scott: Could they give an injunction?

Mr. Maxwell: They would not need to. They would refer it back to the tribunal or the court with directions. This would be irrelevant.

Professor Scott: They are threatening to proceed in the future, perhaps,—an officer threatening to commit a tort.

Mr. Hopkins: Well, could not the Trial Division issue an injunction?

Mr. Maxwell: I have some difficulty in visualizing a situation which would produce a great problem here. If you are talking about somebody exercising statutory powers under a federal statute, I frankly feel that if there is jurisdiction in the Court of Appeal to deal with it, it seems to me that that would be the end of it as a practical problem and I just cannot imagine any further relief being required.

Professor Scott: Not a *mandamus*, not an injunction?

Mr. Maxwell: No, definitely. If the problem is one where they are refusing to exercise jurisdiction—if that is the situation, then I think you are under your *mandamus* provision or perhaps your injunction provision. But if you are dealing with a tribunal that has seized or has taken jurisdiction and has done something wrong in the course of it, then I think it is your right of review that you would want and, indeed, I cannot imagine you wanting anything else, because the Court of Appeal then has full power to deal with the matter and to send it back to the tribunal, with directions. You cannot assume that people are not going to comply with what the court has done.

Senator Connolly (Ottawa West): In the face of section 18, which deals with prerogative writs and includes injunctions and *mandamus*, which also was mentioned, is it not perfectly clear, Professor Scott, that an application for an injunction or a *mandamus* could be brought, without question, in the Trial Division?

Professor Scott: No, the problem is this, that where the decision of the tribunal is in some way infected with any of the grounds listed in section 28, it then comes within

the exclusive purview of the Court of Appeal. When it comes before the Court of Appeal they can review and set aside that order, but the jurisdiction of the Trial Division in *mandamus* and in injunction proceedings is at an end, because once it comes under section 28(1) the whole decision is excluded from section 18. Section 28(3) says:

...the Trial Division has no jurisdiction to entertain any proceeding in respect of that decision or order.

It is the whole decision of the tribunal which is withdrawn from the purview of the Trial Division. Mr. Maxwell, of course, is not willing to go so far as to say that anybody can issue an injunction in that case. He thinks it is not necessary, nor can ever be necessary—nor *mandamus*, nor any of these other things. I am not sure.

Mr. Russell Hopkins, Law Clerk and Parliamentary Counsel: Surely, that would be the choice of the litigant? If the litigant wants an injunction and considers that to be the appropriate remedy, why would he not go to the Trial Court?

Professor Scott: He would, but his case would be dismissed. Suppose his ground were section 28(1)(a), he would be told that because his ground was section 28(1)(a) he is put in the Court of Appeal by section 28(3), and that the Court of Appeal has exclusive jurisdiction and all they can do is review and vary—all they can do is review and set aside.

Mr. Hopkins: But if the litigant simply seeks an injunction before the Trial Division—leave the Court of Appeal out of it.

Mr. Maxwell: I think Professor Scott is postulating a situation where the Court of Appeal has dealt with the matter and perhaps quashed the decision and sent it back to the tribunal, and the tribunal in some way or another is refusing to comply with the direction of the Court of Appeal.

If you postulate that kind of unlikely situation, I feel reasonably confident that that kind of problem could be dealt with by way of injunction or what-have-you, because, quite frankly, they would be acting wholly illegally and would be flying in the face of an order of the Court of Appeal.

Senator Connolly (Ottawa West): Mr. Maxwell, perhaps you would explain this to us further, then. Here is a case, in your example, where the Trial Division has done something which the Court of Appeal finds to be not within its competence, or to be wrong. It seems to me that Professor Scott is saying that the Court of Appeal simply says that it is wrong and reverses the decision. So far am I right? Then it refers it back to the Trial Division. Is Professor Scott saying that the Trial Division, which can deal with prerogative writs under section 18, cannot deal with them because the argument to be made in favour of issuing the writ is contained in section 28?

The Deputy Chairman: Section 28(3).

Professor Scott: The argument is section 28(1) and (3).

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Senator Flynn: Do you mean that if I apply for an injunction under section 18 and it is refused and I go to the Appeal Division and the judgment is quashed, the Appeal Division cannot say the injunction should be issued?

Professor Scott: That is correct, because all they can do is review...

Senator Flynn: It says:

The Trial Division has exclusive jurisdiction...

And the bill also says, in section 27(1):

An appeal lies to the Federal Court of Appeal from any
(a) final judgment,

And the judgment of the Appeal Court will, of course, correct the first judgment and issue an injunction.

Professor Scott: But it can only do what the Trial Division could have done, and the Trial Division would have had no right to issue any injunction because the ground of complaint of the litigant was the ground under section 28(1), and all grounds under section 28(1) can be made the subject only of application to the Court of Appeal to review, vary or set aside.

Senator Flynn: That is the review of the decision made by any body other than the Trial Division.

Professor Scott: That is right—boards, tribunals, anybody else.

Senator Flynn: So it does not apply to the original trial jurisdiction of the Trial Division under section 18; it is something else?

Professor Scott: The point is, if you have an act of a federal tribunal which is infected with any of the defects listed in section 28, then that can be made exclusively the subject of an application to the Court of Appeal, and nobody, neither court, can ever issue an injunction, *mandamus*, *quo warranto* or anything else.

Senator Flynn: But the problem is not there. Just try to imagine what kind of decision you would want the Appeal Court to review. Is it something decided by the Tax Appeal Board?

Professor Scott: I would use any situation where a minister, for example, or any other authority is simply threatening to do something.

Senator Flynn: "Threatening"?

Professor Scott: Or has issued a notice, perhaps, saying that unless I comply with "A", "B", and "C", this is going to be done. I may wish to do more than review, vary or set aside some order. I may want some sort of prerogative relief and, in my view, the prerogative relied should always be available.

Senator Flynn: Suppose a decision of the minister is quashed by the Court of Appeal and they say that the minister should not have done that?

Professor Scott: Well, that will not prevent the minister going on to my land if he feels like it.

Senator Flynn: But I have a remedy, of course.

Professor Scott: Do you?

Senator Flynn: I could come back to the Trial Division and obtain a writ of injunction.

Senator Connolly (Ottawa West): I cannot myself visualize that, if the Court of Appeal should say that the Trial Division should proceed along a certain line, you would need a *mandamus* to get them to do it. I do not think the courts work that way. Assume that the Trial Division, for example, will say, "All right, the Court of Appeal in this case has said that we should proceed along these lines." Even if the grounds are, say, section 28(1) and you base your argument on section 28(1)—I am asking a question here, although I seem to be making a speech—in that instance will the Trial Division not be able to proceed having been so directed by the Court of Appeal, or does the exclusive jurisdiction in section 28 that is conferred on the Court of Appeal prevent the trial Division from acting?

Senator Flynn: It is an entirely new case. The Appeal Division has quashed a decision, and the tribunal under it does not act accordingly.

The Deputy Chairman: So you are starting anew in the Trial Division.

Senator Flynn: So you need a new remedy, and you ask for an injunction or a *mandamus*.

Mr. Maxwell: I think you have to distinguish firstly between the decision that deals with the question of right. For example, is a minister entitled under some statute to hold Mr. B in custody, or is he entitled to go on somebody's land. As a condition of doing that act he may well have to make some decision of a judicial nature. He makes that decision, and somebody is aggrieved by it, and attacks it. The matter goes to the Court of Appeal, and the Court of Appeal says: "No, that was a wrong decision", and they quash it. The minister then says: "I do not care what the Court of Appeal says. Notwithstanding that decision, I am going to do it anyway." At that point you are not trying to quash a decision; you are trying to control an illegal act.

The Deputy Chairman: Yes, you are starting all over again.

Senator Flynn: Mr. Chairman, may I ask a question in respect of a point that has not been raised, and which may not be too important? I wonder if Mr. Maxwell would tell us why the act gives jurisdiction to the Court of Appeal in respect of any interlocutory judgment, whether it decides the question at hand or not. It seems to me that you could delay a final judgment by appealing any insignificant decision.

Mr. Maxwell: Yes, that has been the subject of some comment in other places, Senator Flynn. Frankly, we felt, in the initial stages of this operation, that we should do

this. We find that the Federal Court is functioning very expeditiously these days, and we do not believe it will result in any undue holdup. We also feel, since there are virtually no decisions on practice in the Federal Court, that we ought to get some. This is something, however, which will be watched, and it may be that some restrictions should be built into provision eventually, but I feel that it is worth a trial initially to see how it functions. This is my own view, but I think it will work.

Senator Flynn: I am satisfied with this on the record.

Senator Langlois: Mr. Chairman, I should like to go back to Professor Scott's submission, entitled "An answer to constitutional objections". Unfortunately, I have not had time yet to read it completely. I would like him to tell us if he has commented in this paper on the jurisdiction given by clause 22 to the Federal Court in matters such as claims arising out of contracts of carriage in ships, and also in matters of claims arising out of contracts of marine insurance. If he has not done so I would like to have his views on this.

Professor Scott: Well, what I have done is to deal generally with the matter. I have taken the view that wherever there is legislative authority there is the possibility of judicial authority. Furthermore, there is also, in my view, more incidental jurisdiction than has perhaps been admitted. My own view would be that the question in the first place is whether the general subject matter were one of federal legislative authority, so that it would turn on the particular subject matter involved—navigation and shipping, trade and commerce, and so on. The second question would be whether a reasonably conducted litigation should decide the related matters. In my view, Parliament can have litigation which is one substantial whole dealt with as one substantial whole by the Federal Court of Canada.

That is my view on the matter. Frankly, while I have not considered each and every head of authority, my general impression is that this bill is well within federal legislative jurisdiction and, in my view, my proposals are also. It seems to me that some of the objections have been a trifle captious and even factitious.

Senator Langlois: Am I to understand that you do not feel, in regard to claims arising out of a contract of carriage in ships, that a distinction should be made as between the carriage of goods of an exclusively provincial character and the carriage of goods of a national character?

Professor Scott: The point there is this, that the exclusive provincial powers do not embrace navigation and shipping—not even intraprovincial shipping. You will note that the federal Parliament has a Bills of Lading Act on the statute books. Now, the federal Bills of Lading Act purports to deal with bills of lading generally, and it makes no distinction whether the bill of lading is in respect of inter or intra-provincial shipments. This, so far as I know, has never been challenged in the some eighty years that it has been on the statute books. I think it was put on the statute books under the Attorney-Generalship of Sir John Thompson. In my view these can reasonably

be said to be matters of trade and commerce because they are commercial documents, and matters of navigation and shipping generally. My impression, subject to anything that honourable senators might think to the contrary, is that this would be *intra vires*.

Mr. Hopkins: It is simply concurrent jurisdiction.

Professor Scott: Yes, this is concurrent jurisdiction, apart from anything else.

Senator Langlois: What about marine insurance claims? We have no marine insurance act in Canada that I know of, and the only legislative provisions I know of that deal with marine insurance are those contained in the Civil Code of Quebec.

Professor Scott: As regards Quebec, yes, but the point is that the Civil Code of the Province of Quebec is a pre-Confederation Act, and is partly under federal and partly under provincial legislative jurisdiction. Under Section 129 of the British North America Act all pre-Confederation statutes and pre-Confederation common law and everything else lies as to repeal in the same position as new legislation.

For example, if there is an eighteenth century English statute in force in some province, or a nineteenth century Statute in force in another province made before Confederation, then all of these are subject to amendment according to the respective division of powers. So, the question as to judicial competence becomes, in my view, simply one of whether the Parliament of Canada has either primary or ancillary legislative jurisdiction over marine insurance, if they think fit to exercise that.

Senator Flynn: If they have not do you suggest that any pre-Confederation laws can be considered as federal law and *intra vires* of Parliament because it would be ancillary? Are you, not going a little too far there?

Professor Scott: No. The point is that the courts, when they are given an area of jurisdiction to entertain a certain class of matter, have to entertain all the valid law enacted on the subject, whether it be common law or statute law. The Privy Council said so in a long series of decisions on the provincial divorce courts.

Senator Flynn: When Parliament has done something since Confederation then, of course, that is so. If it amends a provincial statute which was in force at the time of Confederation, then I agree with your thesis, but if it is a matter which has not been touched since Confederation and which falls within the domain of property and civil rights—because an insurance contract is certainly within the category of property and civil rights...

Senator Langlois: There is the *Parsons* case.

Senator Flynn: A pronouncement by Parliament would be necessary in order to make it ancillary. The problem of shipping can be dealt with apart from that of marine insurance.

Professor Scott: Then you are challenging the existence of federal...

Senator Flynn: I am not challenging anything; you did.

Professor Scott: No, I did not challenge it; I rather thought I had supported it.

The point is whether the Parliament of Canada could legislate on the subject matter if it so wished. If it could and wished to do so then they could create a court to administer not only what they themselves enact but all other law, common law on the subject.

Senator Flynn: By saying that the Federal Court has jurisdiction over marine insurance you say that this would make the provincial provisions relating to marine insurance ancillary powers falling within the...

Professor Scott: No, I say that what is in the Civil Code or any other pre-Confederation enactment is not automatically provincial law. For example, the provinces enacted divorce acts before Confederation.

Now, the point is that if Parliament could legislate on a subject, then it can create a court on that subject. If it can create a court on the subject then it can create a court to administer the law on the subject, whatever that law may be. In other words, they do not have to just tell them to administer federal statutes; they may administer common law also.

Senator Flynn: But this is a very subtle way of saying that provincial marine insurance laws are ancillary to shipping, by giving jurisdiction to a Federal Court.

Professor Scott: The point is are they provincial laws in the case in question? Just because it is in the Civil Code does not make it provincial law in itself.

Senator Flynn: In itself it is property and civil rights. If you legislate in shipping you may find it necessary to legislate in insurance, but you have not done so for 103 years.

Professor Scott: I am not expressing an opinion as to whether marine insurance is valid subject matter for federal legislation. I am saying that if it is, then a court can be created to administer that area, whether or not Parliament has enacted any statutes on the subject.

Senator Langlois: Has the *Parsons* case not settled this problem as far as insurance is concerned?

Professor Scott: As far as general contracts of insurance are concerned.

Senator Langlois: Yes, on a particular trade.

Professor Scott: If, for example, there were a question of insuring atomic energy installations and Parliament was legislating on that, it would not mean that where Parliament has other legislative power this does not extend to insurance in those areas.

Senator Langlois: The *Parsons* case has made no such distinction.

Professor Scott: The point is that other cases have decided other things; there is not only the *Parsons* case.

Senator Langlois: To which cases are you referring?

Professor Scott: I mean that where any case decides that a given matter is under federal legislative jurisdiction, the Parsons case does not mean that contracts of insurance in that area cannot also come thereunder like other property and civil rights. For example, the Bankruptcy Act continues policies of insurance in favour of the trustee in bankruptcy. That is because it is federal authority.

Senator Langlois: It is not the same principle at all.

Senator Flynn: Would you not suggest that the act would be *intra vires* in giving jurisdiction on marine insurance if Parliament ever legislated validly?

Professor Scott: If they could legislate validly with respect to it.

Senator Flynn: Well, if they do legislate validly with respect to it.

Professor Scott: No, I would say they can create a court if they could, because the Privy Council says that the jurisdiction is good at least when it is in relation to:

...actions and suits in relation to some subject-matter, legislation in regard to which is within the legislative competence of the Dominion.

In other words, if they could legislate, then they can create a court because laws of Canada, as Laskin points out...

Mr. Hopkins: If I may interject, the built-in safeguard, which I am sure was inserted deliberately by Mr. Maxwell and his associates, specifically limits it to the jurisdiction of the Parliament of Canada by including the requirement relating to any matters coming within the classification of navigation and shipping. If it does not, there is no apparent jurisdiction.

Senator Flynn: The debate remains open; it does not settle the problem.

Senator Connolly (Ottawa West): Is Senator Langlois concerned about the removal of cases involving marine insurance or shipping because in Quebec they are treated in the Civil Code and decisions made under it? Is he concerned about the assumption of this jurisdiction by the Federal Court?

Clause 22 does not give the Trial Division exclusive regional jurisdiction; but concurrent. I would assume that the remedies under the Civil Code that have been available heretofore will continue to be available.

Mr. Hopkins: That is right.

Senator Connolly (Ottawa West): They are not interfered with. Is Senator Langlois concerned by the fact that there might be confusion?

Senator Langlois: Yes, indeed.

Senator Connolly (Ottawa West): And that an action might be taken in the Federal Court rather than before the Superior Court. Does that create a problem?

Senator Langlois: It does, because we make no distinction between the contracts of carriage which are exclusively provincial and those which are national in character. I think this distinction should be made.

Senator Connolly (Ottawa West): You do not have to rely on the property and civil rights section.

Senator Langlois: No; as far as a marine contract is concerned, I rely exclusively on the Parsons case, which has decided that the federal authority has no jurisdiction in contracts of insurance.

The Deputy Chairman: Mr. Maxwell, would you like to express an opinion on this point?

Mr. Maxwell: The constitutional jurisdiction of Parliament with regard to marine insurance is certainly not determined in any way by this bill. We have proceeded on the assumption that Parliament could, if it so wished, enact a marine insurance code.

Now, it has not done so; we feel that in the absence of that type of statute provincial legislation dealing with marine insurance and insurance generally is perfectly valid and, indeed, will remain valid as we see it until there is conflicting valid federal legislation, which there may or may not be.

However, we feel that the substantive rights created by provincial legislation and insurance contracts can be enforced in the Federal Court. We think it is desirable that it be open to litigants to bring in the insurance companies if necessary and have insurance issues tried in the Federal Court together with questions of liability in marine matters.

We consider it unsatisfactory that people have to go to two different courts, to a Federal Court in one instance and then for the insurance issues arising out of that action, to another court. This is all we are trying to do in this area. Whether or not there will ever be a federal marine insurance code is, of course, a question I could not even talk about; I do not know, I have no idea.

Senator Langlois: Are we not putting the cart before the horse there?

Mr. Maxwell: I do not think so. At least, not the way I see it. As I say, implicit in this legislation is the assumption that Parliament could enact such a code if it wished to do so.

Senator Langlois: But it has not.

Mr. Maxwell: It has not done so.

Senator Langlois: We should wait until it is enacted before we create a tribunal.

Mr. Maxwell: I am not so sure. For example, I think it is reasonably clear—I believe it to be clear anyway—that Parliament could enact a contributory negligence act dealing with certain areas of crown law and responsibility. It has not done so. Because it has not done so, it relies on the contributory negligence acts of the provinces, and

it has been held quite authoritatively that those claims can be enforced in the present Exchequer Court where it arises in Crown litigation.

Senator Flynn: Because the Crown is involved.

Mr. Maxwell: That is right.

Senator Flynn: That is something else.

Senator Langlois: That is something quite different.

Senator Flynn: Do you have in mind here on this subsection any claim arising out of or in connection with contractors' marine insurance, which would really mean when it comes under federal legislation?

Mr. Maxwell: No. What we visualize here is that if someone suffers a loss that is covered by insurance, that is governed by provincial law because there is no federal law, we feel that claim could be brought in the Federal Court and it would be unnecessary to split his action between the Federal Court and, let us say, the Superior Court of Quebec.

Senator Flynn: You are satisfied that valid objection could not be raised to the jurisdiction of the court?

Mr. Maxwell: Let me put it this way. That is the assumption on which this legislation is written. We may find that somebody will attack it. As a matter of fact, I would be surprised if it were not attacked. I would also be surprised if we did not succeed. However, one has to make these judgments.

Senator Langlois: And one has to pay for them. That is exactly what I am objecting to. An insured could be taken to the Federal Court by the underwriters; he would have to fight it to the Supreme Court to find out if this tribunal has jurisdiction, and we are asking one of the litigants in that case to bear the cost of this fight before the court.

Mr. Maxwell: I think that would depend on the legal advice he gets.

The Deputy Chairman: It would depend how good the lawyer is.

Senator Langlois: You cannot prevent it anyway.

Senator Flynn: It is difficult to forecast the final result of any case. I have lost good cases and I have won bad cases.

The Deputy Chairman: Honourable senators, since there are no more questions to Professor Scott, on behalf of the committee I should like to thank Professor Scott for coming to Ottawa and appearing before this committee, and for having put a great deal of time into the preparation of two briefs. We are indeed grateful to him for his interest in this piece of legislation and the research work he has done to support the two briefs that were presented to this committee. Thank you very much for appearing.

Professor Scott: Thank you, gentlemen.

Senator Langlois: Mr. Chairman, are these briefs going to be printed as part of our proceedings?

The Deputy Chairman: I should like to ask the committee to give permission to have the two briefs presented by Professor Scott printed as an appendix to our proceedings.

Senator Langlois: I so move.

The Deputy Chairman: Is that agreed?

Hon. Senators: Agreed.

(*Note:* The two briefs, entitled "Proposals for Amendments to an Act respecting the Federal Court of Canada" and "Bill C-172: An Answer to Constitutional Objections" appear as appendices "A" and "B" to these proceedings.)

Senator Connolly (Ottawa West): Mr. Chairman, is it contemplated that we might finish this bill today?

The Deputy Chairman: I was about to raise this point. I was in telephone conversation with Mr. Gerity from Toronto.

Senator Connolly (Ottawa West): He called me, because I was the sponsor of the bill. That is the Canadian Bar Association. I referred him to you and the committee clerk. I did not refer him to the deputy because I understood he had been talking with the officials.

The Deputy Chairman: I think the best explanation can be given the committee by Mr. Maxwell, who has been dealing with Mr. Gerity and other members of the committee set up to present proposals on this bill. Perhaps Mr. Maxwell could explain the situation to us.

Mr. Maxwell: Originally when we started to work on this bill the Canadian Bar Association established a small committee of admiralty experts to deal with the admiralty side of the provisions. That committee consisted of Mr. Gerity of Toronto, Mr. Arthur Stone of Toronto and Mr. Jean Brisset of Montreal. The committee met with an expert we had retained, Mr. Mahoney...

Senator Connolly (Ottawa West): That's a good name.

Mr. Maxwell: A good man too.

Senator Langlois: Irish enough for you.

Senator Connolly (Ottawa West): Oh yes.

Mr. Maxwell: The committee met with him on a number of occasions. We considered the recommendations they made. We adopted some of their submissions and rejected others. The impression I and Mr. Mahoney had was that we had pretty well satisfied the committee about what we had done in this bill by way of changing it round to meet their requirements. As a matter of fact, I was reasonably satisfied from my discussions with Mr. Stone, who was chairman of the committee, that that was so. However, the other day we received a communication from Mr. Gerity asking what we had in fact done about their submissions. I do not know whether he had not gotten down to studying the bill in its revised form or

not; I rather thought perhaps that must be so. In any event, Mr. Mahoney is meeting with Mr. Gerity this morning in Toronto, and I expect that that meeting will probably satisfy Mr. Gerity about our intentions and what we have done. I cannot speak for Mr. Gerity, of course.

Senator Connolly (Ottawa West): I think this is very good, because the impression I got was that Mr. Gerity felt that the work done by the C.B.A. committee was ignored.

Mr. Maxwell: No.

Senator Connolly (Ottawa West): Obviously from what you say I was wrong about that.

The Deputy Chairman: It has not been ignored.

Senator Connolly (Ottawa West): The fact that the department has seen fit to consult with him about the provisions of the bill, and perhaps about their suggestions, is all to the good. I would think that perhaps we should not finish the bill this morning, but should wait until we find out the result of these conversations.

Senator Langlois: In view of what Senator Connolly has just said, I think we would be well advised to postpone the conclusion of this bill until another sitting, until we hear further about this. I suggest you contact Mr. Gerity and find out if he is satisfied and invite him to come here. We should leave our committee open to all who wish to make representation.

The Deputy Chairman: There is no problem about that. I have been in touch with Mr. Gerity. As a matter of fact, he called me this morning just prior to my appearance in this committee and he asked me if I had anything new to report to him about whether the representations of the Canadian Bar had been incorporated in the bill. I told him I was in touch with Mr. Maxwell and that certain recommendations of the committee of the Canadian Bar had been incorporated into the bill and that other provisions had been rejected. I also spoke to him about Mr. Mahoney meeting with him this morning, and he said he was waiting momentarily to hear from Mr. Mahoney, that they were to meet this morning and discuss the bill as it now stands and to determine to what extent the recommendations of the committee of the Canadian Bar had been incorporated into the bill.

We have been in close contact with Mr. Gerity. If he wants to appear before the committee we will be glad to hear him. Anybody will be given every opportunity to appear before the committee. No one has been shut off or shut out from appearing or presenting any views before this committee on this bill. Mr. Gerity certainly cannot claim that he has not had the full co-operation of Mr. Maxwell and the Justice Department officials in relation to this bill, and I want to put this on the record so that it is there permanently and clarified. He said he would contact me later on this afternoon, following his meeting with Mr. Mahoney. If at that time he is still of the opinion that he wants to appear before this committee, we will invite him to appear and we will hear him.

Senator Langlois: That is why I made the suggestion that we should postpone consideration this morning.

The Deputy Chairman: I wanted to make this explanation first and I intended to make it even before you raised your point.

Senator Connolly: Mr. Chairman, is the suggestion then that we are about to adjourn, because I had a question that I wanted to raise. Perhaps if you want to take a little time the committee might care to sit for another 10 or 15 minutes.

Senator Langlois: As long as you care to sit.

Senator Connolly: I do not want to hold the committee up.

Senator Langlois: We are not in a rush to leave.

Senator Connolly: Mr. Maxwell, a number of times people have talked to me about federal boards, commissions and tribunals, using their own expertise and evidence, even after long hearings where evidence has been submitted by interested parties and there has been cross-examination. Sometimes when the hearings have been completed the federal boards, on their own, gather new evidence which they consider to be appropriate and valid evidence and they proceed to come to a decision and to write a judgment based to a large extent upon that new evidence or at least affected by that new evidence.

I think the last example was a case where some lawyers who had an interest on behalf of clients before the National Energy Board found that, following the hearings, the Energy Board had new evidence and, based on that new evidence, they proceeded to write a judgment that might not have been written at the conclusion of the hearings. There was no opportunity for cross-examination on this new evidence. This particular case, as I recall it, had to do with an evaluation of gas reserves in western Canada and the Canadian requirements. I think in this case there were revised estimates submitted by the Ontario Hydro, and without any cross-examination or reopening of the hearings the board proceeded to write a judgment based on the new figures.

That led me into a number of other things that had been mentioned to me since I explained the bill. I must say that I did not attempt any detailed explanation in the Senate such as we are getting here. The question really comes down to whether or not section 29 of the bill is in fact necessary. I wonder if I could illustrate this, Mr. Chairman, referring to the Railway Act. Section 53 of that act allows an appeal with leave to the Supreme Court of Canada from the Canadian Transport Commission on a question of law or on a question of jurisdiction. Mr. Chairman, what I have tried to do is make a little memorandum for my own information here and I am going to refer to that in order to save the committee's time. The Jurisdiction of the Trial Division of the Federal Court in respect to appeals under section 53 of the Railway Act is ousted by clause 28(1) and (3), which I think are pretty clear, and also by clause 30 of the bill we have before us, although clause 30, subsection (2) may

give the Trial Division jurisdiction in certain special cases. Clause 18 of the bill we have before us does not affect the appeal allowed by section 53 of the Railway Act. I direct your attention to clause 28, subparagraph (1). It says:

Notwithstanding section 18...

These are the words which I would like to emphasize...

...or the provisions of any other Act...

which would include the Railway Act.

...the Court of Appeal has jurisdiction to hear...

an application. I am skipping places in subsection (1).

... the Court of Appeal has jurisdiction to hear... an application to review and set aside a decision or order...

made by a federal board, commission or other tribunal. It goes on to say:

(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

That is the first case. It seems to me that Mr. Maxwell said—perhaps it was in the house committee—that the example that I gave when I started this line of questioning might be overcome by the use of that subsection. Perhaps I could stop here, even though I want to continue, and ask Mr. Maxwell whether, in his view, from now on, under clause 28(1)(a) the federal tribunals and boards are to be found by the rules of evidence?

Mr. Maxwell: No, Senator Connolly, that would not be my view and I think that if that were the result it would be a very serious one. Indeed, my feeling would be that if we enacted a law requiring all the tribunals to follow the rules of evidence, we would probably conclude ultimately that we should give the matter to the courts and abolish the tribunals, creating a few more courts. At least, that would be my rather strong feeling towards it.

If I could now deal with what I think was the point you were coming to, you talked about the board, after the event, collecting additional evidence and making a finding of fact, as I understood it, and that the person that you would represent felt it was an erroneous finding based upon that. I say to you, of course, that if it is not erroneous, I do not think there is any basis for a complaint. But if the tribunal—which is not bound by the rules of evidence, and indeed that is one of the justifications for having a special tribunal, to start with—if they so conduct their affairs that they take into consideration information and evidence that is erroneous, and they do it without a chance, off the record, apart from a person being given a chance to cross-examine or deal with it, to prevent that sort of error—then in my view that is the very sort of thing that paragraph (c) of sub-clause (1) of clause 28 deals with:

(c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Senator Connolly: “Material before it”, in this case—the board might say that the material before it forces it

to go to that extreme. You could visualize a situation where there was some doubt as to whether or not the material before it was valid.

Senator Flynn: I think you are right when you say that they might apply, because I think you could have a case where a board would have, in a way, proceeded *ex parte*, which is a principle of natural justice, and if you can prove that the result from that is that there is a prejudice resulting from it. As you say, if you collect outside evidence and it is wrong, and the result is a prejudice to the party involved, I think (a) would apply, “failed to observe a principle of natural justice...”.

Senator Connolly: Would Senator Flynn go so far as to say that there might be doubt cast upon that outside evidence?

Senator Flynn: You need to be able to prove that there is prejudice. If the board found something, outside of the hearing, which is true, which you cannot contest, I do not think you would be able to obtain a judgment that would reverse the decision of the board; but if you prove that what they collected, this evidence they collected outside of the parties being present, was wrong...

Senator Connolly: Or doubtful?

Senator Flynn: Or doubtful, I think you could have added to it in order to make the board decide otherwise—I think then the appeal court would feel justified to apply paragraph (a) of clause 28 and quash the decision.

Mr. Maxwell: I agree, Senator Flynn. I think your remedy would exist within the four corners of that clause, whether you base it on paragraph (a) or on (c).

Senator Flynn: Or on (c), yes.

Mr. Maxwell: It seems to me that a combination of those two provisions covers the waterfront.

Senator Connolly: I am happy to have two eminent authorities like Senator Flynn and Mr. Maxwell reassure me on that point. May I go on?

An Hon. Senator: Are you leaving section 28, senator Connolly?

Senator Connolly: No, I am leaving clause 28. I do not call it “section” until it is in an act. I call it “clause” while it is in a bill. Am I right?

Mr. Maxwell: You are right.

Senator Connolly: I remember having this debated in the Senate one day and it taught me that. Now, clause 28(1) deals not with the standing section 18 or with the provisions of any other act. The bill, coupled with paragraphs (a), (b) and (c) of clause 28(1), would appear to give the Federal Court of Appeal at least as wide a jurisdiction as section 53 of the Railway Act confers upon the Supreme Court of Canada. The Supreme Court of Canada can hear an appeal on a question of law or jurisdiction under section 53. Clause 28(1), with those three subparagraphs, seems to be that wide.

Mr. Maxwell: I would say, Senator Connolly, that they are a good deal wider. That would be my view of the matter. I think the appeal to the Supreme Court of Canada under the Railway Act is really a fairly narrow one, it is a question of law or jurisdiction, which again is another question of law. I do not think the Supreme Court of Canada would entertain the sort of examination...

Senator Connolly: Did I say a question of "law or fact"? I meant a question of law or jurisdiction.

Mr. Maxwell: In my view that is a much narrower one.

Senator Connolly: I would have thought so, too. To re-affirm the intention to confer jurisdiction on the Federal Court of Appeal, in appeals taken under section 53 of the Railway Act, Schedule B in this bill, at page 62, amends section 53 of the Railway Act itself, by substituting the words "Federal Court" for the words "Supreme Court" or "Supreme Court of Canada" as the case may be. Here really is the nub of my problem. Why in these circumstances is clause 29 required? If I can summarize it, it reads in part this way:

Notwithstanding sections 18 and 28, where provision is made by an Act of the Parliament of Canada for an appeal to the Court,...

That is, the Federal Court...

to the Supreme Court...from a decision...of a federal board..., that decision...is not...subject to review...except to the extent...provided for in "that" Act.

Which means, not this bill but the act which gives the right of appeal, and in this case, in this example, it is the Railway Act.

Now, I say, even though clause 28 may broaden the grounds for appeal from a federal board, and I added in my memo that it may be intended that they should be broadened, and Mr. Maxwell already seems to confirm that—clause 29 still would appear to restrict the grounds of appeal, say under section 53 of the Railway Act, to such matters and procedures as have hitherto applied, as have hitherto prevailed. It would seem to me that not only the statutory provisions are preserved...

Mr. Maxwell: They are.

Senator Connolly: ...but as well the decisions that have been made under those statutory provisions. In this circumstance, would it be desirable to remove clause 29 so that you would not have these restrictions; and if this were done, what would be the result, in Mr. Maxwell's view.

Mr. Maxwell: The best way to answer you, Senator Connolly, is to explain the philosophy behind this proposal, what we are trying to do here. We started off with the view that we ought not to disturb any existing rights of appeal that existed in a multitude of federal statutes. The

only change we decided to make was that we would take the jurisdiction initially from the Supreme Court of Canada; and, if you will recall my remarks of today, we did that because we feel the Supreme Court of Canada has been given an unconscionable burden in this area. And we would put those rights of appeal in the new Federal Court of Appeal. So what you then have to start with is a large number of appeals from various kinds of tribunals to the new Federal Court of Appeal. But those appeals are almost invariably on a question of law or jurisdiction.

So we have not really changed substantive rights at all. The substantive right of appeal we are keeping intact, and that is the philosophy of this bill. We recognize, however, that those rights of appeal are not always very satisfactory, because it is very difficult to get a court, which is entertaining an appeal on a question of law or a question of jurisdiction, to examine and see precisely how the tribunal has conducted its affairs. That is not the sort of thing that you normally get.

So we felt that in addition to the rights of appeal we would provide a right of review, and what you really have is these two remedies joining, coming together in the new Federal Court of Appeal.

In the case of the National Energy Board, for example, that you mentioned earlier, you would have with regard to anything that happened before that board two possible remedies; but they would be to the one tribunal, namely, the Federal Court of Appeal. That would be a right of appeal that has existed for some time, but in addition you would have a right of review. You could pursue one or both at the same time before the same court, as you wish.

Senator Haig: Before the same court?

Mr. Maxwell: Yes, the Federal Court of Appeal.

Senator Connolly (Ottawa West): If you took out clause 29, would you not have all that you say the bill purports to give?

Mr. Maxwell: Well, clause 29 is there for other purposes. For example, there are remedies that go to the Governor in Council that we do not feel really you can give to the courts.

Senator Connolly (Ottawa West): I appreciate that.

Mr. Maxwell: They are there for broad political purposes and that sort of thing. Clause 29 really is there to spell out the structure that I have just tried to explain. We are not interfering with rights of appeal. They are preserved in their fullness by clause 29. If you cannot get your problem before the court with that right of appeal, then you can follow your right of review, and that is simply what clause 29 is there for. It explains or elicits that philosophy.

Senator Connolly (Ottawa West): I noticed in line 29 and line 30 of clause 29 that you made an amendment in the House of Commons and it is underlined.

Mr. Maxwell: Yes, that is right.

Senator Connolly (Ottawa West): I had the greatest of difficulty trying to understand why those words were inserted. They are the words "to the extent that it may be so appealed".

Mr. Maxwell: Now, Senator Connolly, if I can tell you about those words, I had been having some discussions with Mr. John O'Brien of Montreal about this matter, and oddly enough John O'Brien was concerned about the very statute you are referring to, namely, the Railway Act, because that is a very peculiar statute. Not only is there a right of appeal to the Supreme Court, which will now be the Federal Court, on a question of law and jurisdiction, but there are also other powers.

Mr. O'Brien wrote to me saying that there was the right of appeal to the Governor in Council. I wrote back to him and said that I did not agree with him. There is no right of appeal. But there is a statutory power in the Governor in Council to do all sorts of things. He said, at least as I understood him—and I should not really be speaking for him, but it is odd that the point should come up in the course of your question—he said that for years lawyers had been talking about this as a right of appeal. Indeed, he referred me to some cases where that sort of language seems to have been used. I said that I felt that that is loose language and that there is not really a right of appeal at all. That is why those words as such were put in.

Senator Connolly (Ottawa West): Were you thinking primarily of the application to the Governor in Council in rate cases?

Mr. Maxwell: Normally what happens on those applications to the Governor in Council is that they are dealt with on a policy basis. They are not dealt with, really, on a legal basis at all, because, of course, if there is a legal question the proper course is to put it before the court. The Governor in Council deals with those problems on a broad basis of policy.

Mr. O'Brien was concerned that if this was an appeal to the Governor in Council that then really there would be no jurisdiction. He was concerned that this review jurisdiction might be ousted. And I told him that I do not regard it as an appeal, that the statute does not say that it is an appeal, but that it simply confers a power upon the Governor in Council to reverse. Indeed, the Governor in Council can act of its own motion without anybody bringing anything to it.

So those words were added just, we thought, to put it beyond argument that that is not an appeal within the meaning of Clause 29. It is a right in the Governor in Council which is an overriding right. It does not matter what the right is, really; the Governor in Council can deal with the problem as a matter of policy.

Senator Connolly (Ottawa West): And those underlined words, then, simply preserve that right to go to the Governor in Council in that case?

Mr. Maxwell: No. They do not preserve that right. But, in my view, they preserve the right to go to the courts to review, notwithstanding that the Governor in Council can, as a matter of policy, reverse the whole thing, ultimately, if it wishes to do so.

You see, if it could be argued that there was a right of appeal to the Governor in Council within the meaning of this thing, then there would be no right of review, and that is what we are trying to avoid.

I do not know whether I have satisfied you or not, Senator Connolly.

Senator Connolly (Ottawa West): It is a very complicated subject. I still wonder whether Clause 29 really does anything for you.

The Deputy Chairman: It does not hurt, in any event.

Mr. Maxwell: I think it does something, yes. It shows how the rights of appeal that exist in a number of federal statutes relate to the right of review, and without that I do not think you would ever be able to figure it out. Maybe you can't anyway.

Senator Connolly (Ottawa West): You would not have the review, if you did not have clause 29, you say?

Senator Flynn: No.

Mr. Maxwell: You need clause 29. As I say, it is in there for two or three different reasons. One is that if there are appeals to the Governor in Council given by an act, then I would doubt very much that as a practical matter there is any point in taking your case to a court, because it is going to be dealt with as a matter of policy anyway.

Senator Connolly (Ottawa West): You might have both.

Mr. Maxwell: Well, in the Railway Act you do have both, but, of course, the Railway Act provision is not an appeal, if one examines the language of the Railway Act. At least I say it is not an appeal. Mr. O'Brien, who is a very distinguished counsel, is dubitante about it, but largely, I think, because of his long experience in the railway field. Apparently people talk about there being an appeal under that statute, although speaking for myself I would not use that term at all.

Senator Langlois: Mr. Maxwell, I wish to draw your attention to the language used in the French version and the English version of 28(c), which to my mind is quite different and I would like you to draw this to the attention of your translators. Where we have "perverse" in English, it has been translated as "absurde". There is quite a difference between the two terms. A thing can be absurd without being perverse and vice versa. Then "capricious" has been translated as "arbitraire". Again you have two totally different meanings, and this throws a different colour on the right of review given there.

Senator Connolly (Ottawa West): You might have a better appeal in French than in English, or vice versa.

Senator Langlois: Yes, and it is much easier to prove absurdity than perversity.

Senator Flynn: We always say that when we lose an appeal—the judgement was absurd.

Mr. Maxwell: I can tell you this much, a great deal of time was spent by our linguists on the translation of this, and I am frank to say that I could not really say whether they have done a proper job or not. But I do have an assistant here, Mademoiselle Belisle who might be able to add some clarification on that.

Senator Langlois: Through you I would suggest to Mademoiselle Belisle that in French we have “pervers” for perverse.

Mademoiselle Denis Belisle, Special Assistant to the Deputy Minister, Department of Justice: But the meaning is not the same, senator. We spent about four hours translating the words because they were key words, and I checked the translation with several translators. We checked several dictionaries, and we found the best translation for “perverse” in English was “absurde”. If you check in several dictionaries, you will find it so. “Perverse” in English does not have the same connotation and does not mean “pervers” in French. It has a slightly different connotation in English. This is a trick that the English language and the French language have, you have words that are quite similar. They are almost spelled the same but the colouring of them has a different meaning. There is nothing immoral about a “perverse” decision in English, whereas there is in French.

Senator Flynn: Would “perverse” equal “illogique”?

Mlle. Belisle: “Absurde.”

Senator Flynn: I mean in French “de façon illogique”. “Illogique” would appear to me to be a better word than “absurde”.

Mr. Hopkins: “Perverse” in English has a moral implication.

Senator Flynn: Well, “pervers” in French has a moral implication. “Absurde” has no moral implication.

Mlle. Belisle: The same job was done with respect to the word “capricious” and the best translation according to all the dictionaries we have, and we have a complete set of them, is “arbitraire”. I can assure Senator Langlois that we spent at least four or five hours on this.

The Deputy Chairman: Well, I would be willing to accept that.

Senator Connolly: The other day we had another statute here in which the word s-e-i-g-n-o-r-i-a-l was used. I questioned it on the ground that it seemed to me that in the Civil Code it should have been spelled s-e-i-g-n-e-u-r-i-a-l, and this was accepted. The change was accepted and it did not need an amendment.

Mr. Hopkins: Just to complete that particular story, senator, it was found that in the Civil Code they used the word “seignoral” and not “seigneurial”. The Department of Justice said that in the Oxford English Dictionary the

preferred spelling was “seignoral” and not “seigneurial”. And therefore, as Senator Connolly says, a change was made in the statute. And, as he said, it did not need an amendment.

Senator Langlois: May I ask Mlle. Belisle if they have discussed this problem with Professor Laurence, a linguist in Montreal?

Mlle. Belisle: No, we did not. We have very good translators. But I did check it out with several lawyers to see the exact meaning in the cases, in the words and phrases and everything, so it is not just a dictionary work. It was also a case of checking it out in several cases.

Mr. Hopkins: Both the English and the French have to be read together, and between the two of them I think the situation will be clear.

Senator Langlois: You are not supposed to do that any more.

Mr. Maxwell: I must say I agree with what Mr. Hopkins has just said. I am reasonably certain that between the English and the French here we have covered the waterfront. If there is a difference, I hope it is not too radical a difference. I do not believe there is. But it is a difficult problem because of the different shades of meanings these words can have.

Senator Flynn: In any event, as it widens the scope of appeal it should be all right.

Senator Connolly: We had a problem like this on Bill C-4, if you remember, and Senator Giguère came up with either a French word or an English word—I don’t remember which—and it seems to me we are going to have this many times, particularly in bills of this character, and I think the department is glad to see us think about these things, and certainly we want to do what we can to make it sure. But I think Mlle. Belisle has covered the waterfront.

Senator Langlois: Mr. Chairman, I don’t want to cast any doubt on the good work done by Mlle. Belisle.

The Deputy Chairman: Can we consider the work on this bill has been completed subject to whether or not Mr. Gerity wishes to appear before this committee?

Senator Flynn: Yes.

Senator Connolly (Ottawa West): Or his committee of the C.B.A.

The Deputy Chairman: Well, he is the contact man with us.

Senator Langlois: There seems to be a misunderstanding between Mr. Gerity and Mr. Mahoney.

The Deputy Chairman: That is right. Mr. Gerity undertook to contact me and Mr. Bouffard here following his meeting with Mr. Mahoney. If he decides that he wishes to appear before the committee, then we will arrange a

date to hear him, and I shall notify the committee as to the date. Now, if Mr. Gerity decides he does not wish to appear before the committee, have I then the authority to report the bill without amendment?

Some Hon. Senators: Agreed.

Senator Flynn: If you don't see any problem of procedure, then I don't mind.

The Deputy Chairman: Then it all depends on whether Mr. Gerity wishes to appear or not.

Senator Flynn: Do you think, Mr. Hopkins, there is a problem in doing that?

Mr. Hopkins: There is never a problem unless it is created.

Senator Flynn: But maybe because of the small number here?

The Deputy Chairman: They should be here.

Senator Connolly (Ottawa West): Mr. Chairman, you protect yourself on this. If you think another meeting of the committee is required, then you summon it.

The Deputy Chairman: You leave it in my hands, then?

Hon. Senators: Yes.

The Deputy Chairman: Mr. Maxwell, we thank you for coming to assist us and we shall advise you if we need you further on this particular bill.

The committee adjourned.

APPENDIX "A"

Proposals for Amendments to "An Act Respecting the Federal Court of Canada". Bill C-172 of the House of Commons of Canada as Reported to the House of Commons 21 October 1970. Stephen A. Scott, November 8, 1970.

1. It had been hoped to prepare a thorough study of the matters dealt with by this Bill. The speed of its progress through the House has unfortunately made this impossible. Nevertheless it is important to deal with a few of the problems most readily apparent.

2. Serious injustice is possible whenever two related matters must be dealt with in two different courts. With the best will in the world proceedings may turn out to have been taken in the wrong court. Taking new proceedings after a dismissal for lack of jurisdiction can be extremely costly, futile, or even impossible; it will in any event involve delay. Furthermore, two sets of proceedings, with consequent expense and legal complication, may have to be taken over one matter which should be litigated as a whole. These problems are all much aggravated when it is at the appellate stage, perhaps even in the Supreme Court, that the lack of jurisdiction is determined. Parliament has a responsibility to see that these problems are kept to a minimum.

3. Under the present Bill conflicts may arise not only between federal and provincial courts' jurisdiction, but also between the jurisdiction of the Trial Division and that of the Federal Court of Appeal under section 28.

4. We do not think that the Bill would have been the worse for making concurrent rather than exclusive the jurisdiction of the Trial Division as regards Crown proceedings and "Extraordinary remedies" (sections 17 and 18). But if it is to be exclusive, Parliament should deal more specifically with certain consequential jurisdictional problems.

5. In proceedings under section 17 we think that a plaintiff ought to be able to implead in the same proceedings, in addition to the Crown or its officers, all other relevant parties, and that the latter ought to be able to implead third parties, so that the entire matter can be settled in a single proceeding. We therefore propose the addition of sub-section (6), which we think constitutionally unobjectionable, to section 17, as follows:

"(6) In any proceedings governed by this section, any person may be impleaded as defendant or third party to try any claim which arises from the same or a related source, and all parties to the proceedings shall be granted the relief to which they are respectively entitled."

6. Jurisdiction under sections 18 and 28 gives rise to particularly serious problems.

7. The first is the conflict between the jurisdiction of the Trial Division and that of the Court of Appeal. They

are made mutually exclusive (s. 28(3)); yet it will often be unclear whether the jurisdiction of the Court of Appeal is available (because, for example, the judicial or quasi-judicial character of the tribunal may be open to question). Yet, as the bill stands, proceedings taken in the wrong court must fail. What is more, where the Court of Appeal *does* have jurisdiction [having it is sufficient; it need not be invoked] on any of the grounds listed in section 28, the whole "decision" which is the object of review is in its entirety put outside the Trial Division's jurisdiction under section 18, and not the less so when the attack is on other grounds, or the application is for other kinds of relief, than are permitted to the Court of Appeal by section 28.

If the two cognate jurisdictions are to be kept in separate hands, provisions should be introduced to eliminate the consequences of conflicts. *We propose the following:*

That the period at the end of sub-section (3) of section 28 be deleted, and that the following be added thereto:

“; and

(a) the Court of Appeal shall then have all the jurisdiction of the Trial Division but may direct that Division to try any issue; and

(b) the Trial Division may order proceedings pending therein to be continued, whenever they appear to be governed by this sub-section, as proceedings of the Court of Appeal.”

8. Sections 18 and 28 also create difficult conflicts with the provincial courts. In effect, section 18 ousts their jurisdiction in favour of the Trial Division in a variety of cases. But the boundaries of the Trial Division's jurisdiction cannot be so clearly defined that one will always know in advance where to sue; yet to sue in the wrong court is, as the Bill stands, fatal. It may not be clear, for example, whether the authority (who may be an individual person with a variety of functions) is, or purports to be, acting as a federal or provincial authority: indeed, to find out by what right a person claims to act one may have first to take the proceedings and await an answer. One may have therefore to go deeply into the merits in order to decide what should be a preliminary question of jurisdiction. But it is not right that the prerogative or other remedies by which jurisdiction is to be tested should themselves be encumbered with jurisdictional difficulties. It is not reasonable that such proceedings should be dismissed—it may be in the Supreme Court of Canada—because they were commenced in the Federal Court rather than in the provincial courts, or vice-versa.

We suggest a two-fold solution. First, marginal cases ought to be allowed to remain in whatever jurisdiction the proceedings were commenced. Second, provision should be made for transfer of proceedings where jurisdiction is declined. We repeat in this context the proposal made in paragraph five above respecting the impleading of additional defendants and third parties.

We accordingly propose:

That the words "actual or alleged" be inserted before the words "federal board, commission or other tribunal" wherever these words occur in section 18; and That section 18 as so amended be renumbered as subsection (1) of section 18, and that additional subsections be added to section 18 as follows:

"(2) Subsection (1) does not exclude the jurisdiction of any other court to hear and determine on the merits proceedings to which no objection has been made on grounds of jurisdiction, or to which objection has been made but overruled."

"(3) A court which declines jurisdiction by reason of subsection (1) may order the record of its proceedings to be transferred to the Trial Division, which may order that the proceedings be continued as proceedings of the Federal Court, and may make such orders as the interests of justice may require."

"(4) When the Federal Court dismisses proceedings for lack of jurisdiction under this section it may order that the record be transferred to any court which appears to it to be a court of competent jurisdiction, and such other court may order the proceedings to be continued as its own and make such other orders as the interests of justice may require."

"(5) Subsection (6) of section 17 of this Act applies to proceedings under this section."

9. Section 2(g) so defines "federal board, commission or other tribunal" as to exclude from judicial review persons acting, or purporting to act, under so much of the common law and pre-Confederation statute law as lies under federal legislative jurisdiction. The same is true of miscellaneous legislation of the United Kingdom Parliament since Confederation which may be held to extend to Canada as part of the law thereof.

Proceedings thereon—for example, a quo warranto challenging persons holding pre-Confederation statutory offices under federal or apparent federal jurisdiction—can, as the Bill stands, only be taken in the provincial courts. Yet there seems to be no reason why, given the general tenor of the Bill, such proceedings should be excluded from the competence of the Federal Court, or why a determination that the office is, for example, provincial, should result, not in a determination of the merits, but in a dismissal for lack of jurisdiction.

There remains, secondly, also the "extraordinary remedies" (as the Bill calls them) against persons not acting under an Act of the Parliament of Canada, but directly under the *British North America Act* itself. It is not unknown, for example, for a quo warranto to be brought against a Privy Councillor: *R. v. Speyer*; *R. v. Cassel*, [1916] 1 K. B. 595; [1916] 2 K. B. 858. Such proceedings must, as the Bill stands, be brought in the provincial courts only. There seems to be no reason to exclude them from the jurisdiction of the Federal Court, given the tenor of the present Bill.

The legislative authority of Parliament to confer the two foregoing kinds of jurisdiction rests, we suggest, not merely on the enumerated heads of federal legislative

authority, but also on the general jurisdiction with respect to the peace, order and good government of Canada, the whole coupled with section 101 of the *British North America Act*, 1867.

While suggesting that the Federal Court be given the foregoing types of jurisdiction, we can see no reason to exclude them from the provincial courts. Indeed, if the Federal Court is, as we suggest, given jurisdiction therein, and if, contrary to our suggestion, this jurisdiction is made exclusive, it will become necessary to vary our draft subsections (2) and (3) above to make them mention not only subsection (1) but also our draft subsection (6).

We propose:

That section 18 be further amended by the addition thereto of the following provisions as subsection (6) thereof:

"(6) The Trial Division has concurrent original jurisdiction in cases which would fall within subsection (1) were section 2(g) of this Act so read that the words "an Act of the Parliament of Canada" included:

(a) the *British North America Act*, 1867, its amendments from time to time, and any order, rule or regulation made under any of them;

(b) So much of the common and statute law as is continued subject to the legislative authority of the Parliament of Canada by section 129 of the *British North America Act*, 1867, or by any enactment or instrument extending that section, or the rules of law therein, to any part of Canada; and

(c) any Act of the Parliament of the United Kingdom, and any order, rule or regulation made thereunder, not within paragraph (a), enacted since the first day of July, one thousand eight hundred and sixty-seven, extending to Canada as part of the law thereof, and subject to the legislative authority of the Parliament of Canada."

10. Similar difficult jurisdictional conflicts arise also under subsection (5) of section 17. A court should in principle be able to decide easily at the outset of its inquiry whether it has jurisdiction. Yet the very object of the inquiry under section 17(5) may be to decide a controversy whose very merits turn on the question whether the person who is the subject of the proceedings is, or is not, in contemplation of law, a member of the Canadian forces, or whether he is serving outside Canada. He may be challenging, for example, the validity of his induction or the renewal of his term of service. He is put in the dilemma of contending that he is a member of the Canadian forces serving outside Canada in order to get the jurisdiction to issue the writ necessary to vindicate his contention that he is not a member of the Forces, or not serving outside Canada. And if in the end the Court decides the question in the negative, this, as section 17 stands, produces no result on the merits, but only a dismissal for lack of jurisdiction. Even the very question whether the person was a member of the forces, or was serving abroad, might well be relitigated so far as

any substantive rights turned upon them—there being no determination, therefore no *res judicata*, on the merits, but only on the jurisdiction.

We suggest the following:

That subsection (5) of section 17 be amended by the deletion of the words “any member of the Canadian Forces serving outside Canada”, and the substitution therefor of the following:

“any person who is, or who is alleged for purposes of jurisdiction to be, a member of the Canadian Forces serving outside Canada; but this does not exclude the jurisdiction of any other court to hear and determine the merits of proceedings to which objection on grounds of jurisdiction either has not been made or has been overruled; and where such a court declines jurisdiction, it may order that the record be transferred to the Trial Division, which may order that the proceedings be continued as proceedings of the Federal Court and may make such other orders as the interests of justice may require”.

11. As there may be situations, however unusual, where the authority of the Crown is exercised abroad without legislative provision (see cases cited in *Ex parte Mwenya*, [1960] 1 Q. B. 241), it may be desirable to add to subsection (1) of section 55 the following:

“or to which, at common law, the process of a superior court enjoying *mutatis mutandis* the powers of the superior Courts at Westminster may run”.

12. Though the problem is much less acute in the case of concurrent than of exclusive jurisdiction, it may often be unclear until the end of the proceedings whether, in law and in fact, the subject-matter of the litigation was strictly within the heads of concurrent jurisdiction. Take the example of bills and notes. The merits of much litigation on this general subject are concerned with whether the instrument which gives rise to the proceedings exactly fits within the complex and stringent definitions of bill of exchange and promissory note. This may be seen in such recent cases as *John Burrows Ltd. v. Subsurface Surveys Ltd.*, [1968] S.C.R. 607; *Toronto-Dominion Bank v. Parkway Holdings Ltd.*, [1968] 1 D. L. R. (3d) 716; and *Range v. Corporation de Finance Belvédère*, [1969] S.C.R. 492. In the two latter cases, the

proceedings, even assuming that the Crown had been party, (see s. 23), probably would as the Bill now stands have been dismissed for lack of jurisdiction had they been taken in the Federal Court. Yet it was only in the Supreme Court of Canada that the instrument in the Range case was held not to be a promissory note.

The restriction of section 23 to bills and notes cases in which the Crown is party doubtless drastically reduces the importance of the particular illustration given. But the problem is equally applicable to the other heads of concurrent jurisdiction. We suggest that, when the matter is open to enough doubt that no one takes objection to the jurisdiction of the court, and the judge before trial does not dismiss the proceedings *proprio motu* for lack of jurisdiction, or he actually sustains his jurisdiction,—that this is basis enough for the Trial Division to hear and determine the case on its merits. Such principles are no novelty in the definition of judicial jurisdictions. Is it not usual to give a court, for example, jurisdiction where the plaintiff claims, say, five hundred dollars, rather than jurisdiction where the plaintiff is entitled to five hundred dollars, (which would mean a dismissal for lack of jurisdiction only, where, after trial on the merits, the award was four hundred and ninety-nine)? We would apply these principles to the definition of Exchequer Court jurisdiction.

We propose the following:

That section 26 be amended by the addition of the following:

“(3) The jurisdiction of the Trial Division under sections 20 to 26 of this Act extends to hearing and determining on the merits proceedings to which no objection has been made before trial on grounds of jurisdiction and which have not been dismissed before trial *proprio motu* by the Trial Division on grounds of jurisdiction, and also proceedings to which objection has been made but overruled.

“(4) When the Federal Court dismisses proceedings for lack of jurisdiction under those sections it may order that the record be transferred to any court which appears to it to be a court of competent jurisdiction, and such other court may order the proceedings to be continued as its own and may make such other orders as the interests of justice may require.”

APPENDIX "B"

Bill C-172: An Answer to Constitutional Objections by Stephen A. Scott

1. Federal Court Jurisdiction at Law and in Equity

Suggestions have been made in some quarters that Bill C-172 may be *ultra vires* *quoad* jurisdiction in relation to all causes of action not founded directly on federal statutes. On this reasoning the Federal Court could entertain no proceedings for enforcement of rights at common law or in equity, even in areas of federal legislative jurisdiction, as, for example, industrial property (clause 20 of the Bill).

Such objections should not go unanswered. In the first place it must be pointed out that it is very easy indeed to convert a right of action at law or in equity into a statutory right. One simply enacts to the effect that "there shall be a remedy under this Act in every case where a remedy would be available at common law or in equity", and one is then left with an undeniably statutory right of action, which even the objectors admit, can then be confided to the jurisdiction of the courts of Canada. Surely, then, looking at the matter as one of principle, the distinction thus put forward is too trivial to form the line of demarcation of constitutional authority. Looking at the authorities, the result seems the same. Laskin says, *Canadian Constitutional Law*, 4th ed., 1969, p. 817

"Laws of Canada" must also include common law which relates to the matters falling within classes of subjects assigned to the Parliament of Canada',

and describes as "extravagant" the argument that Parliament cannot empower courts of Canada to hear and determine cases arising on pre-Confederation law within its legislative authority (p. 819):

"This flies in the teeth of s. 129 of the B.N.A. Act and of the well-known and established line of cases governing its application"...

Anglin, J., speaking for a majority of the Supreme Court of Canada in *The King v. Hume; Consolidated Distilleries Ltd. v. Consolidated Exporters Corporation Ltd.*, [1930] S.C.R. 531 at 534-5, contrasts "laws enacted by the Dominion Parliament and within its competence" with "the whole range of matters within the exclusive jurisdiction of the provincial legislatures". Matters within federal legislative jurisdiction are obviously not in the latter category; they are either in the former or not contemplated in the learned judge's comments at all. The Privy Council, indeed, speaks in *Consolidated Distilleries Ltd. v. The King*, [1933] A.C. 508 at 522 of "actions and suits in relation to some subject matter, legislation in regard to which is within the legislative competence of the Dominion" as being within the permissible competence of the courts of Canada.

Indeed, it would seem that if the distinction suggested were well founded, clause 18 also, giving the Court jurisdiction to grant extraordinary remedies, would equally be open to the same objection. Where, for example, is the

substantive federal Act giving injunctive relief? Clause 18 itself merely gives jurisdiction to issue injunctions where there is a substantive right thereto, something which must be decided *ab extra*; yet clause 18 is not thought to be constitutionally objectionable, and, in the light of *Three Rivers Boatman Ltd. v. Conseil canadien des Relations ouvrières*, [1969] S.C.R. 607, could not be thought so, even if one did not accept that (as suggested at p. 618) Parliament's legislative jurisdiction was exclusive with regard thereto.

2. Suits by the Crown and Third Party Proceedings

The Consolidated Distilleries decisions do however create difficulties of another kind. The remarks of the Privy Council may be thought to cast a degree of doubt in the permissible scope of what is now clause 17(4) of the Bill:

"(4) The Trial Division has concurrent original jurisdiction

(a) in proceedings of a civil nature in which the Crown or the Attorney-General of Canada claims relief..."

The well-known dicta of the Privy Council in *Consolidated Distilleries Ltd. v. The King*, [1933] A.C. 508 at p. 521-2, begin with what is not a statement of their Lordships' reasons but a report of counsel's argument against jurisdiction:

"It was suggested that if read literally, and without any limitation, that sub-section would entitle the Crown to sue in the Exchequer Court and subject defendants to the jurisdiction of that Court, in respect of any cause of action whatever, and that such a provision would be *ultra vires* of Parliament as one not covered by the power conferred by the Parliament of Canada conferred by s. 101 of the British North American Act."

Lord Russell of Killowen for the Board then continues:

"Their Lordships, however, do not think that sub-section (d), in the context in which it is found, can properly be read as free from all limitations. They think that in view of the three preceding sub-sections the actions and suits in sub-section (d) must be confined to actions and suits in relation to some subject-matter, legislation in regard to which is within the legislative competence of the Dominion. So read, the sub-section could not be said to be *ultra vires*, and the present actions appear to their Lordships to fall within its scope."

Of these remarks two things must be said. First, they profess only to construe the section and to uphold it as construed—not to rule on the constitutional validity of any wider provision. Indeed their Lordships explicitly say at pages 520-21:

"The point as to jurisdiction accordingly resolves itself into the question whether the language of the Exchequer Court Act upon its true interpretation purports to confer the necessary jurisdiction..."

Their Lordships are anxious to avoid expressing any general views upon the extent of the jurisdiction conferred by S. 30, beyond what is necessary for the decision of this particular case. Each case as it arises must be determined in relation to its own facts and circumstances."

Second, it was unnecessary to consider the possible constitutional basis of a wider jurisdiction.

On the principle of the matter, it is difficult to see why rights of the Crown, say, under a bond given even at common law, or in monies had and received to its use, or arising from the conversion of its chattels, should not, equally with its rights in land, be "public property" within section 91(1A) of the *British North America Act*, 1867, and within section 101 as being "in relation to some subject-matter, legislation in regard to which is within the legislative competence of the Dominion," the Privy Council's phrase quoted above. Indeed, in assessing the scope of jurisdiction appropriate to a court of crown claims, as it must have appeared to the British Parliament which in 1867 enacted sections 91(1A), 101 and 129 of the *British North America Act*, one may usefully refer to the history of the English Exchequer, whose development supports a jurisdiction far wider than the jurisdiction here contended for.

Third party proceedings present more difficulty. In *The King v. Hume; Consolidated Distilleries Ltd. v. Consolidated Exporters Corporation Ltd.*, [1930] S.C.R. 531 it was held that, where the Crown sued a defendant on certain bonds, the jurisdiction of the Exchequer Court did not extend to claims by the defendant by way of indemnity over against third parties.

The statute there in question did not however purport in terms to give any such jurisdiction; it was only the rules which were invoked for that purpose. It is submitted that the decision is binding authority only as to the jurisdiction of the Exchequer Court under the Act of 1927 and the rules made thereunder.

Nevertheless, certain remarks of Anglin, C.J.C. for the majority of the Court comment on section 101 of the B.N.A. Act, and these, though not strictly necessary to the decision, weigh against a general third party jurisdiction here contended for.

The answer to such objection is two-fold. First, the reasoning of Anglin, C.J.C. seems to be precisely that which led to the decision of the majority of the Supreme Court of Canada in *Winner v. S.M.T. (Eastern) Ltd.* and *A.-G. Can.*, [1951] S.C.R. 887, decisively rejected by the Privy Council on appeal in *A.-G. Ont. v. Winner*, [1954] A.C. 541 which held, contrary to the Supreme Court, that a single business undertaking could not be severed, for constitutional purposes, into two, one interprovincial and the other intra-provincial.

The Privy Council said (at p. 581-2):

"No doubt the taking up and setting down of passengers journeying wholly within the province could

be severed from the rest of Mr. Winner's undertaking, but so to treat the question is not to ask is there an undertaking and does it form a connection with other countries or provinces, but can you emasculate the actual undertaking and yet leave it the same undertaking or so divide it that part of it can be regarded as inter-provincial and the other part as provincial.

"The undertaking in question is in fact one and indivisible. It is true that it might have been carried on differently and might have been limited to activities within or without the province, but it is not, and their Lordships do not agree that the fact that it might be carried on otherwise than it is makes it or any part of it any the less an interconnecting undertaking."

So likewise here, it is submitted, when the principal litigation is substantially and fairly within the competence of courts of Canada, Parliament must equally be entitled to empower the same courts to decide incidentally thereto all matters which a reasonable legislator would consider a single whole and as such appropriate for simultaneous determination as a whole. The question is not whether some of the issues might have been severally triable here or there, but whether those issues, as they did arise, were in the circumstances parcel of litigation fairly begun in a court of Canada.

There is indeed nowadays scarcely a page of provincial legislation on civil procedure that does not testify to the reasonableness of trying third party issues as part of the principal proceedings and in one court.

Not the least of such provisions may be found in the Quebec Code of Civil Procedure, 13—14 Eliz. II, S.Q. 1965, C. 80; thus under Art. 172 the defendant may

"in the same proceeding constitute himself cross-plaintiff to urge against the plaintiff any claim arising from the same source as the principal demand, or from a related source."

By Article 216:

"Any party to a case may implead a third party whose presence is necessary to permit a complete solution of any question involved in the action, or against whom he claims to exercise a recourse in warranty."

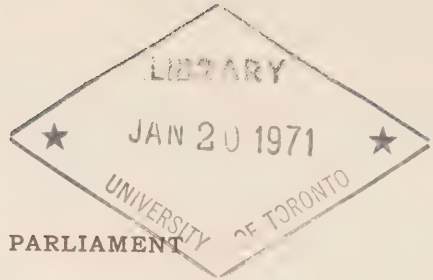
By Article 34:

"When, in answer to an action before the Provincial Court, a defendant makes a claim which itself would be within the jurisdiction of the Superior Court, the latter is alone competent to hear the entire case, and the record must be sent to it at the diligence of the parties."

The second answer to such objections lies in the very terms of section 101 of the B.N.A. Act. It is desirable

from time to time to give some attention to the Act itself, and not only to what has been said about it. The additional courts contemplated therein must be "Courts for the better Administration of the Laws of Canada." So long as the court's heads of jurisdiction are fairly and squarely within the "laws of Canada", it cannot be that the court ceases to be within s. 101 merely because, for the better administration of those laws, it is allowed

some additional incidental jurisdiction. It is not unreasonable for Parliament to believe that its laws are better administered when the subject is not forced to have recourse to another court, with the certainty of expense and the possibility of delay and conflicting judgments, on a matter which could fairly be considered parcel of the principal matter of litigation.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT
1970

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable A. W. ROEBUCK, Chairman
The Honourable E. W. URQUHART, Deputy Chairman

No. 3

WEDNESDAY, DECEMBER 2, 1970

Third and Final Proceedings
on Bill C-172,
intituled:

**“AN ACT RESPECTING THE FEDERAL COURT
OF CANADA”**

REPORT OF THE COMMITTEE

(Appendices and Witnesses:—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hollett
Aseltine	Lang
Belisle	Langlois
Burchill	Macdonald (<i>Cape</i>
Choquette	<i>Breton</i>)
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McGrand
Croll	Méthot
Eudes	Petten
Everett	Prowse
Fergusson	Roebuck
*Flynn	Smith
Gouin	Urquhart
Grosart	Walker
Haig	White
Hayden	Willis

*Ex officio member

(Quorum 7)

Orders of Reference

Extract from the Minutes of Proceedings of the Senate of Monday,
November 16, 1970.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Lamontagne, P.C., for the second reading of the Bill C-172, intituled: "An Act respecting the Federal Court of Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Kinnear, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, December 2, 1970

(3)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m.

Present: The Honourable Senators: Urquhart (*Deputy Chairman*), Burchill, Cook, Croll, Eudes, Fergusson, Gouin, Haig, Hayden, Hollett, Langlois, Macdonald (*Cape Breton*), McGrand and Prowse. (14)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee resumed consideration of Bill C-172, intituled: "An Act respecting the Federal Court of Canada".

The following witnesses were heard in explanation of the Bill:

Mr. D. S. Maxwell, Deputy Minister of Justice and Deputy Attorney General of Canada;

Mr. John Mahoney, Q.C., Special Counsel to the Department of Justice.

On Motion of the Honourable Senator Langlois it was ordered that the Letter and related appendix received from Mr. Francis Gerity, Q.C., Toronto, Ontario, as well as "A Brief from the Bar of the Province of Quebec to the Government of Canada on Bill C-172" be printed as appendices to these proceedings. They appeared in the proceedings as Appendices "A" and "B" respectively.

After discussion and on Motion of the Honourable Senator Macdonald (*Cape Breton*), it was Resolved to report the said Bill without amendment.

At 11:30 a.m. the Committee adjourned.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Wednesday, December 2, 1970

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred the Bill C-172, intituled: "An Act respecting the Federal Court of Canada", has in obedience to the order of reference of November 16, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

Earl W. Urquhart, Q.C.,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Wednesday, December 2, 1970

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-172, respecting the Federal Court of Canada, met this day at 10.30 a.m. to give further consideration to the bill.

Senator Earl W. Urquhart (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, you will recall that at our last meeting on November 26, we completed our review of Bill C-172 with the exception of representations we were awaiting from Mr. Gerity of Toronto. Mr. Gerity does not wish to appear before our committee, but wrote a letter to our Clerk, dated November 26, 1970. He attached an appendix, which contains restated portions of a letter to Mr. Maxwell, the Deputy Minister of Justice and Deputy Attorney General of Canada, dated March 16, 1970.

Perhaps we could have this correspondence incorporated into our proceedings.

(*For text, see appendix.*)

We have Mr. Maxwell with us again this morning. Since a copy of Mr. Gerity's letter and the appendix was distributed to all honourable senators, I presume that you are familiar with their contents.

Perhaps Mr. Maxwell could introduce Mr. Mahoney to honourable senators and deal with Mr. Gerity's representations.

Mr. D. S. Maxwell, Deputy Minister of Justice and Deputy Attorney General: Thank you very much, Senator Urquhart. Honourable senators, at the outset I wish to observe that Mr. Gerity's letter to the Clerk of the Committee dated November 26, 1970 is, as I understand it, written on his own behalf and not on behalf of the Bar committee of which he was a member. We have had extensive dealings with this committee.

I have with me Mr. Mahoney, who has been our special adviser with regard to the admiralty side of this particular bill. Since he has carried out most of the discussions with that Bar committee and, indeed, reported to the Canadian Bar itself with regard to this matter in Halifax, I think he is in a better position than I to deal with Mr. Gerity's letter.

Mr. J. Mahoney, Special Counsel, Department of Justice: Honourable chairman, first of all I should explain the status of the Bar committee. The committee of the Bar Association was set up at the 1969 meeting of the Bar in Ottawa. It consisted of Mr. A. J. Stone of Toronto, Mr. Jean Brisset of Montreal and Mr. Francis Gerity of Toronto.

The purpose of the committee was to form a liaison with the department and myself in relation to advice to the department respecting the revision of shipping laws. In this case their attention was given particularly to that part of the revision dealing with the repeal of the Admiralty Act which, of course, is accomplished by this bill.

The committee was of a very informal nature. It was not recognized formally by the department, but its function was simply to enable us to deal with three prominent members of the Admiralty Bar without having to go to the Admiralty Bar generally for advice on technical matters relating to the admiralty in the bill.

In its functioning, I met with the committee on several occasions, and indeed the advice of the committee was incorporated in the early drafting of this bill, so that even though the liaison was of an informal nature I think I should assure honourable senators that there was a considerable input into this bill by the committee. I feel that should be made clear so that there will be no misunderstanding; this particular committee of the Bar Association, and the individual members of it as well as the members of the Bar generally, had even more opportunity than is usually the case to make their feelings known on this bill.

The last meeting of the committee took place early in April of last year. The purpose of that meeting was simply to tie together some of the loose ends and to make any final suggestions that had to be made before the bill went to the Commons. At that time the committee made four recommendations. I should add, even prior to that copies of the bill as it had been presented in the House of Commons were distributed, as honourable senators know, very widely to the members of the Bar, and we had received quite a number of comments from individual members of the Bar as well, so at the meeting in April we took into account those individual comments as well as the comments of the committee of the Bar Association.

The four points that were raised by the committee were considered then within the department, and two of the four were the subject of amendments that were put forward by the honourable Minister of Justice in the Commons committee. Those two, which I will deal with first, related to clause 22(2) paragraphs (d) and (g). These amendments were simply a clarification of the original bill in order to emphasize, in paragraph (d), that the claim for damage caused by a ship included a claim for loss of life or personal injury. This had been intended in the original draft, but the comments from a number of members of the Bar made it clear that there was some misunderstanding of it.

Senator Hayden: At the present time, before this bill may become law, what is the position, and where is your right to be exercised if there is a death by reason of negligence in the operation of a ship.

Mr. Mahoney: Do you mean before this bill becomes law?

Senator Hayden: Before this bill passes into law.

Mr. Mahoney: That is under the existing Admiralty Act?

Senator Hayden: That is right.

Mr. Mahoney: There is similar provision in the existing Admiralty Act, and so far as loss of life is concerned under the fatal accident provisions of the Canada Shipping Act, in conjunction with the jurisdiction under the Admiralty Act, so there is not any change there. What has been done in this bill is to clarify and set out in much greater detail the distinct heads of jurisdiction of the Federal Court on its admiralty side.

In the Admiralty Act, as honourable senators know, the jurisdiction is fairly generally stated, and stated in a rather confusing manner in that section 18, which deals with jurisdiction, sets out some general heads of damage and then refers to a schedule to the Admiralty Act, which schedule is in fact section 22 of the Supreme Court of Judicature Act of the United Kingdom of 1925. That section, which was adopted as a schedule to the Admiralty Act, sets out further heads of jurisdiction, and there is some duplication with section 22.

Senator Hayden: But if this present bill does not take away any rights, it may detail them but it does not take them away, and plus your section 4, which carries through the original jurisdiction under the statutes existing before this bill comes into force, you say:

The court of law, equity and admiralty in and for Canada now existing under the name of the Exchequer Court of Canada is hereby continued. . . .

Therefore, if you are going into detail, unless you specifically destroy some right, every right that exists at that moment flows into the new court.

Mr. Mahoney: Yes, this is true.

Senator Hayden: The same court under the new name. Is that not right?

Mr. Mahoney: Quite so.

Senator Hayden: Then what is the worry about whether you are too specific or not specific enough?

Mr. Mahoney: I do not think there is any worry about that so far as this committee or Mr. Gerity is concerned. I did want to point out the two changes that were made in the bill as a result of the final recommendations of the committee, and this was one of them. It is simply a clarifying change.

The other is also a clarifying change, and it is contained in clause 43(8). Again in the original draft it was intended that this subsection should cover multiple ship collisions, and it was felt that the word "ship" would include the plural, as it no doubt would, but the comments we received from the Bar made it clear that there was some misunderstanding of this, so that section was amended to make it quite clear that the action for collision included action for damages in multiple ship collisions. Those were the two changes that were made, not just as a result of the meetings with the Bar, but also

as a result of comments that had been received from a number of other sources.

Senator Hayden: I take it you call them clarifying because actually they do not change the law?

Mr. Mahoney: This is quite right. They make no change whatever in the law, but there was a fear that there might be misapplication by the Bar or misinterpretation by the court in that they were not completely clear.

As to the recommendations that were made by the committee, but which were not carried on by the department, the first one was with reference to clause 2 paragraph (b). This brings up a point that was raised a few moments ago about the carrying on of the past jurisdiction of the court. Clause 2 paragraph (b) contains a definition of Canadian maritime law. This phrase "Canadian maritime law" is a new phrase in the legislation that was not referred to in the act and, therefore, it is a new piece of phraseology, although the purpose of it is to define in general terms the jurisdiction which the Admiralty Court had under the Admiralty Act. That section has to be read or should be read in conjunction with section 42 which section simply carries on the past jurisdiction of the court.

Senator Hayden: What is the objection, the use of the word "Canadian"?

Mr. Mahoney: The objection, sir, is really to the use of the linked words, "Canadian, maritime and law" and essentially Canadian. The basis of the objection which has been made here is that this may impose some limitation on the court. This was a point which was not discussed at the last meeting with the committee because it had been discussed on a number of occasions before. It was certainly my opinion at that time and still is that while Mr. Gerity had put forward this point of view that it was not one which was supported by the other members of the committee. At the final meeting of the committee all that was discussed was that we could put forward to the department a proposed change to take out the words "Canadian maritime law" and use the words "admiralty law" instead.

In the discussions which followed that meeting it was felt that this was a very good description of the jurisdiction of the court and that it should be retained as it was. The point of this definition really is to make completely certain that the Federal Court retains all aspects of admiralty jurisdiction which it has had in the past and while the jurisdiction of the court has been broadened and clarified in this bill it was felt that we should make it abundantly clear that any ancient head of jurisdiction which had been lost in the process of time was still retained by the court.

Senator Hayden: May I ask you a question? Is there not some quibbling on this definition of Canadian maritime law? After all, all it purports to do is to carry forward any applicable law under the Admiralty Act or any other statute and as it may be altered or changed under this bill.

Mr. Mahoney: This is quite right.

Senator Hayden: Am I missing something?

Mr. Mahoney: I do not believe so, sir, I felt that it was clear and the committee of the Bar, as a whole, also felt it was clear. My point was that the jurisdiction of the Admiralty Court and the jurisdiction of this court can be traced back through quite a large number of statutes, both Canadian, as well as statutes of the United Kingdom going back into the eighteenth century. Rather than detailing all of this it was felt that a definition of Canadian maritime law was a desirable feature of the bill so it was put in this way. Quite honestly, I do not believe that it will impose any restrictions on the courts, certainly the use of the term Canadian in relation to maritime law. It would not impose a restriction because the court may have reference to foreign law and often does, but that foreign law is not assertive but merely persuasive. Once it has been referred to and adopted by the court then it becomes Canadian law and as such is applied by the court in future cases. I do not believe that this section will raise any problem whatsoever.

The fourth and final point which was raised in the committee is dealt with by Mr. Gerity in the appendix to his letter. This is the second page of that appendix and I am deliberately skipping a point he raised which I will come back to later. The point I want to discuss for a moment now is the very last one in his appendix. This relates to section 46, paragraph (ix) on page 27 of the bill. Under this section the court may make rules governing the appointment of nautical assessors and the trying or hearing of a cause or other matter wholly or partly with the assistance of assessors.

The committee of the Bar Association felt, from practical experience in the past cases, that this rule should include some restriction which would make the questions put by the court to the assessor and the answers of the assessor a part of the record of the court. This is a practical consideration and all of the members of the committee felt that it should be so and indeed other members of the Bar had made the same sort of comment. However, there was no question that section 26, the general rule-making power, does give the court power to make a rule saying exactly that. The court can do it in its rules if it wishes to and if it put the recommendation of the Bar Association into this paragraph would it, in effect, be a restriction on the rule-making power? None of the other paragraphs contained restrictions. Section 46 is a generally worded section which gives the court a fair degree of amplitude in making and changing rules and this seems to be a very desirable way of doing it. It was for this reason that we felt no restriction should be placed on that rule.

Senator Hayden: What is the duty of the assessor?

Mr. Mahoney: His duty is simply to assist the judge in answering technical questions.

Senator Hayden: If you make the questions and answers part of the record and then get into an appeal, what is the basis of the appeal—the reasons for judgment of the judge? What if he has misinterpreted what the assessor has said to him?

Mr. Mahoney: This certainly could impose a complicated feature. While it may well be that the rules relating to assessors may need some clarification by the court I strongly feel that restriction should not be imposed in the statute itself.

Mr. Maxwell: If I may project, I think perhaps I have the same difficulty as Senator Hayden, because I think there is a good deal of confusion in the minds of some people about what assessors are supposed to be and how they are to function. Certainly the words that are underlined in Mr. Gerity's letter, in my view, do not make any sense at all. He obviously had something else in mind because who is to put the questions to whom? I can only assume from what I have been able to learn from people who know more about admiralty practice than I do and I do not know much, that it must be questions put by the judge to the assessor. In my way of thinking it would be a rather curious sort of proceeding to have that form part of the record. I would assume they would have to be regarded as witnesses. I think there is a great deal of confusion.

Senator Hayden: If that is going to happen then counsel for all parties should have the opportunity to examine and cross-examine so as to clarify.

Mr. Mahoney: It might be added that the usefulness of the assessors to the court might be severely restricted. It is for this reason that recommendation was followed.

I would like to return to the point raised by Mr. Gerity at the bottom of page 1 of his appendix and at the top of page 2. The reason I dealt with this is that these two points he has raised were not part of the recommendations of the committee at the last meeting. They were points which had been disposed of much earlier in meetings with the committee and therefore I deal with them in a different manner.

The first suggestion which he makes, and made earlier as well, is a proposed change, or new rule (x):

rules providing for consular notice where the nature of the action and the national character of the ship indicate such necessity.

He refers there to the present rule 47(a) which does contain that requirement in some instances in the case of foreign ships, those instances being particularly matters of possession, wages, and this sort of thing.

Again it did not seem to fit into the general nature of section 46 that this sort of specific rule making power need be put in section 46. It is something which can be done under the general rule making authority, if necessary.

I would like to point out in addition that whether or not there is such a rule in the appropriate cases the Canada Shipping Act does contain provision for notice to consuls in the case of actions brought against foreign ships in certain cases, so there is statutory authority provision for this.

Senator Hayden: That statutory provision is effective, is it not?

Mr. Mahoney: Yes.

Senator Hayden: It can be used for all the purposes that are covered in this memorandum.

Mr. Mahoney: Indeed. The present rule 47(a) is a genuine rule of the court in the sense that it is for the convenience of the court, but it is not a substantive provision. A substantive provision is contained in the Canada Shipping Act and presumably will continue to be contained in any successor to the Canada Shipping Act.

Senator Hayden: It is procedural, is it not?

Mr. Mahoney: Yes. The second one is perhaps more important. Mr. Gerity has listed it under suggested paragraph (y). This relates to the procedure for the arrest of a sister ship. It was made clear, not only to the committee but to the Bar Association generally at the 1969 convention that in considering overall revision of certain laws it was not proposed to put the rules for the arrest of a sister ship, or the substantive provision for the arrest of sister ships, into any successor to the Admiralty Act. It was proposed that this sort of provision would be contained in the Canada Shipping Act or in some successor legislation.

Just to clarify the meaning of the sister ship provision, these are provisions which first came to be adopted by a number of maritime nations around 1955 or 1956 as a result of an international conference. They simply allow, in appropriate cases, for the arrest not just of the ship which has done the damage but of any other ship owned at the same time by the same owner. It is simply an extension of the right of arrest and it is a desirable feature and all the members of the Bar agree that it is a desirable feature.

The reason I go into the past detail about this is that, in spite of the fact that it was made quite clear that we did not propose to deal with it in this statute, almost every written comment that we received on the bill mentioned this particular point, that the sister ship provision had not been included. I think the answer is the same now as it was earlier, that these are substantive provisions, that they are better off in another statute than they are in the strictly procedural rules. They have no real place in a statute which relates almost entirely to jurisdiction, and certainly they would not have a place in a rule making statute, because it would really mean enacting substantive law in that rule making statute and enacting it in a very difficult way, subject to all sorts of future changes which would not be subject to parliamentary scrutiny. So for these reasons we felt this was not the place to put it.

Senator Hayden: I was going to say that we have a reputation here in the Senate for being very concerned about giving anybody below the status of Parliament the right to enact substantive law.

Mr. Mahoney: I think, sir, that is really the key to the objection here that if any such provision were contained in the rule making statute it would be wide open to all sorts of objections and this is a very serious subject which involves possibly ratification of an international convention.

Senator Hayden: Which might not be approved?

Mr. Mahoney: Which might not be approved and therefore this is simply not the right place to deal with it. The Bar had been assured that at some point in the general revision of shipping laws this matter will be dealt with, because it is a desirable feature.

Senator Hayden: I suppose the purpose of arresting or having authority to arrest a sister ship is really to enforce the provision of security at an early date. Otherwise the assets may disappear from the jurisdiction of the court.

Mr. Mahoney: That is basically it. It gives one added power to arrest to an existing power.

Senator Cook: The ship that does the damage might be all smashed up or destroyed.

Senator Hayden: That is right. There may not be much value left there.

The Deputy Chairman: And the Canada Shipping Act, Mr. Mahoney, is presently under revision?

Mr. Mahoney: That is right.

The Deputy Chairman: And you are connected with that revision.

Mr. Mahoney: Yes. These are all the comments I had to make on the letter and on the relationship with the committee, but I will be happy to try to answer any other questions on the admiralty provisions, if any honourable members have questions?

The Deputy Chairman: Honourable senators, are there any further questions?

Senator Hayden: I do not like to do all the talking, but I would like to say that as one member of the committee I do not feel there is anything in the submissions to the committee which would make us concerned about making changes in the bill which is before us now.

The Deputy Chairman: Is that the general opinion of the committee, honourable senators, that the representations made by Mr. Gerity would not provoke any change in the bill as it is presently before us.

Hon. senators: Agreed.

The Deputy Chairman: Thank you very much, Mr. Mahoney. I want to thank you very much for appearing this morning before our committee and for giving such an informative and detailed analysis of the submissions that have been made by Mr. Gerity and for answering these submissions to the complete satisfaction of the Legal and Constitutional Affairs Committee. Thank you very much.

Honourable senators, in addition to the representations received from Mr. Gerity, you also receive a photo copy of a brief from the Bar of the Province of Quebec. That is the second thing we have to deal with. Mr. Maxwell will deal with this brief. We circulated the brief yesterday to all members of the committee and I presume that you are familiar with the contents of the brief.

Honourable senators, would you rather have Mr. Maxwell deal in a general way with the brief, or are there specific questions which you would like to address to him?

Senator Hayden: Perhaps Mr. Maxwell will refer to the various points.

Mr. Maxwell: Thank you very much, Senator Urquhart. This brief deals with a number of matters, only some of which represent constructive criticism of the bill.

The first point is the suggestion in the brief that perhaps we are premature in reducing the retirement age of the judges of this new court. That, of course, is a question of policy which I suppose can be argued both ways. They point out that people are living longer now than in the past. While that is no doubt true, people are also generally retiring a little earlier, at least in most circles.

I think the Government was highly motivated to reduce the retirement age. This is to be a travelling court, throughout the country, both Trial and Appeal Branch. That sort of extensive travel is harder on people than that involved in some of the other courts which do not travel quite so far. However, that is a question of policy and I cannot say much about it. I think most people feel it is a move in the right direction.

The Deputy Chairman: There is no question about that.

Mr. Maxwell: Secondly, they raise the question of the oath of office, which appears in clause 9 of the bill. The brief suggests that it might be removed. I may say that this was considered at one stage. We decided against removing the oath of office. Most people felt that a person taking a statutory office should be prepared to give some sort of public undertaking that he is prepared to carry out properly the duties and functions attached to that office. If he is not prepared to do that, one might question whether or not he should be appointed at all. We did not prescribe a form of oath in this case. It is a fairly flexible provision and it would appear to me at least to be quite reasonable.

Senator Hayden: What is the difference between an oath of office and the formal acceptance of the appointment?

Mr. Maxwell: I do not know exactly what they have in mind. I would presume that they would simply file a letter saying they accept the appointment which, I suppose, must by implication carry with it an undertaking to perform the duties of the office. Speaking for myself, and this again may be a matter of cosmetics, I would think there must be some virtue in a person taking office undertaking to perform the duties and functions of that office.

Senator Prowse: Is not the oath of office actually formal acceptance of the office?

Mr. Maxwell: That would be so, of course.

Senator Hayden: Having regard to the procedures which I understand are followed I do not think the appointment would be made unless there were first an indication that the person being considered would accept it.

Mr. Maxwell: Normally, for example, a person appointed to the judiciary indicates his acceptance and there is a subsequent oath of office before he functions as a judge.

Senator Langlois: Does this brief not confuse the whole hypothesis of the oath of allegiance?

Mr. Maxwell: I think you may be right, senator.

The next point, which is laboured to some considerable extent, is the constitutional aspect. This committee has already heard some discussion of this. As a matter of fact, Professor Scott when he was here last week discussed this problem and, indeed, took a completely different view of the constitutional position than is taken in this paper. Its suggestion in a nutshell is that Parliament cannot confer jurisdiction to deal with a cause of action on a Federal Court unless it has in fact enacted some kind of substantive law in relation to it.

The issue turns on the meaning of the "laws of Canada" as that expression was found in the British North America Act. Speaking again for myself, I am of the view that this matter is determined and decided by a case which is in fact referred to in the brief. It is that of Consolidated Distilleries Limited, found at page 11 of this translation, where there is a passage quoted from Lord Russell of Killowen with regard to what is presently section 30, subsection (d) of the Exchequer Court Act.

I think that the writer of this brief recognizes that this case does appear to decide the question that he is putting in issue. He simply seems to suggest that there may be some doubt with regard to it. My submission is that there really is no doubt about this proposition. However, even if there were I should have thought that we would be unduly chary if we did not confer this jurisdiction where we feel it ought to be. In that case it could be challenged if desired. I feel that the matter is really beyond argument at this stage basically because of the Consolidated Distilleries Limited case.

Page 15 of the brief seems to agree with the provisions of the bill which gives review jurisdiction to the new Federal Court. The fourth paragraph reads:

We do not believe we have to challenge the constitutionality of these two sections, taking for granted the constitutionality of the acts governing federal bodies.

The next point related to appeals to the Supreme Court of Canada, at page 16. The brief seems to take no objection to that set of provisions. A good deal of this brief seems to be basically in support of the contents of the bill.

At page 18 the brief appears to agree with the contents of the bill respecting place of sittings.

At page 19 the brief seems to question the provision of the bill giving the court jurisdiction with regard to bills and notes. I am not certain that they are aware of the fact that we have modified that clause, which is 23, so as to restrict the jurisdiction to cases where the Crown is a party to the proceedings. That was a change that we made in committee in view of some of the criticism that had been raised with respect to this jurisdiction being given to the Federal Court. That that restriction would substantially meet the point.

The document seems to agree with the provisions with respect to prescription. It makes a comment on page 19, I guess it is, about the disclosure provisions respecting government documents and the public interest, (clause 41) although I do not think their comment is really very critical. They recognize that basically what we are trying to do is to clarify some rather confused law on the subject of the

production of documents that are perhaps not to be disclosed because of some public interest.

They make comment on the French text, which I have looked at. I am not really an authority on the French text, but it seems to me that while there is a small difference in the actual word for word translation, on balance it does not make any difference in the total meaning of the context as I conceive of it. We, of course, are not now necessarily translating word for word. We used to translate word for word, which sometimes produced undesirable meanings in one language or the other.

Now, therefore, we are trying to get the right meaning in both languages, whether or not they are actually word for word translations. In short, we are trying to have two versions that mean the same thing regardless of whether or not the words are literally translated.

Moving along, they seem to support what we have done about commencing proceedings against the Crown.

There is another comment, on page 21, about certain evidentiary provisions that we have included. They agree with the substance of the provisions we have included. Again they take issue with the translation. Here again, as I have looked at this translation it seems to me that it does not matter that they are not literally translated; in my submission that does not really change the result. I think they mean the same thing whether there is a literal translation or not.

Gentlemen, I am not sure that there is anything in the balance of the paper that is really deserving of great comment. I do not see anything that can be taken as critical of the provisions of the bill as they are written.

The Deputy Chairman: So generally you would say the brief supports the bill?

Mr. Maxwell: It would seem to, subject to certain exceptions that I have mentioned. I think the bill is generally supported.

Senator Hayden: It is a useful commentary.

Mr. Maxwell: Yes.

Senator Hayden: And I think they should be thanked for sending it.

The Deputy Chairman: Oh yes, indeed.

Mr. Maxwell: The one final matter that I suppose I should mention—

The Deputy Chairman: Before we dispose of this brief, perhaps we should record that we are indebted to the Bar of the Province of Quebec for their exhaustive analysis of and well written brief relating to Bill C-172, and perhaps a letter should go forward from the committee thanking them for their interest in this piece of legislation.

Honourable senators, the third and final matter has to do with the memorandum I received last evening from Senator John Connolly, who is the sponsor of this bill. A copy of that memorandum was distributed to all honourable senators this morning.

I should like to ask Mr. Maxwell if he would deal with the points raised by Senator Connolly in that memorandum.

Mr. Maxwell: I did not want to do that Mr. Chairman, because this relates to a matter Senator Connolly raised at the last session. It is a sort of follow up to the discussion we then had. I think Senator Connolly has fooled me to some extent, because he phoned me yesterday and said he was going to put the question in writing because he could not be here. I understood what the question was and said I would be quite happy to make some further comment about this problem. However, he did not tell me he was going to ask me to do some digging, which I have not really got around to doing. That is on the second question. That catches me somewhat off guard this morning.

However, to go back to the real question, which is how the provisions of the Railway Act function, perhaps I should just mention to honourable senators that under the provisions of that act there is a right in the Governor in Council—the act does not say appeal—the Governor in Council can in effect reverse, indeed on its own motion, or on an application made by the interested person, any judgment or order of the commission. In addition to that power in the Governor in Council—I am going to call it a power because in my view it is not an appeal as this would be ordinarily understood by most lawyers, although I think lawyers who have been dealing with this area tend to regard that as an appeal, and they talk that way. At least, Mr. John O'Brien tells me that is the way they talk, and he is very familiar with this area; we have had some discussions and I am sure he is right that this is the way they talk, but it is not the way I would talk. Perhaps we are attributing loose language to people like Mr. O'Brien, but this is the sort of thing that does happen. Anyway, there is this power in the Governor in Council to reverse any judgment or order of the Transport Commission. In addition, there is an appeal—and the word “appeal” is used in the provisions of the Railway Act—to the Supreme Court of Canada on any question of law or jurisdiction, if I recall the language, which is pretty general language.

I should point out to you that the right to go to the Governor in Council is completely unrestricted; the Governor in Council can really set aside an order whether it is legal or whether it is not legal; the power is virtually legislative.

Mr. E. Russel Hopkins, Law Clerk and Parliamentary Counsel: And has done so on several occasions.

Mr. Maxwell: Indeed.

Senator Hayden: The Governor in Council can function only to the extent that he has authority to function.

Mr. Maxwell: That is right, but within the framework of that statute the Governor in Council has a very, very broad power indeed.

Mr. Hopkins: Have you got the number of the section? I have the act here.

Mr. Maxwell: I think basically the position we take is that the Governor in Council ordinarily would not reverse. I think it is

section 53. Ordinarily he would not reverse an order of the commission on the basis of a question of law.

Senator Hayden: But are we concerned about that, what he may or may not do?

Mr. Maxwell: I do not think so.

Senator Hayden: Is not it whether you shut the door on his right to do anything?

Mr. Maxwell: Yes, that is the issue. That, of course, turns on whether or not that power in the Governor in Council is an appeal. I have taken the position that it is not an appeal. If it is not an appeal, it is quite clear that the new remedy we are giving, the remedy of review, is available, along with, of course, the right of appeal to the Supreme Court of Canada; that remains intact. It will be the new Court of Appeal now, but it will remain intact. There will be the right of review. Of course, in addition to that, the overall power of the Governor in Council to do whatever he is authorized to do under that statute remains in full force.

Senator Hayden: If there is any possibility that the Governor in Council might decide that the provisions in this bill would prevent the Governor in Council from entertaining an application because it is in the nature of an appeal.

Mr. Maxwell: Perhaps it would be helpful if I read the provision in question, section 53, subsection (1) beginning with the Governor in Council:

The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order that the Governor in Council may make with respect thereto is binding upon the Board and upon all parties.

So you see it is a very broad power, Senator Hayden. I do not know if you were looking at that from the standpoint of new legislation whether you would like it very well. It is an extremely broad power.

Senator Hayden: If you look at section 29 in the bill it says:

Notwithstanding sections 18 and 28, where provision is expressly made by an Act of the Parliament of Canada for an appeal as such to the Court, to the Supreme Court, to the Governor in Council or to the Treasury Board from a decision or order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except to the extent and in the manner provided for in that Act.

Senator Cook: I notice that they use the word "appeal" and not "review".

Mr. Maxwell: That is quite so. The question, I think, which has been concerning Senator Connolly and Mr. O'Brien, if I can refer to him again, is whether this power in the Governor in Council to rescind—whether that power in section 53(1) that I have just read of the Railway Act is an appeal so as to prevent the right of the review that is conferred by clause 28 of the bill. My submission is that it is not an appeal of that kind at all. As a matter of fact, it is not an appeal at all, but a very broad power. This thing becomes manifestly clear in my view when you read later on the provision that gives the actual right of appeal to the Supreme Court of Canada. This is subsection (2) which says:

An appeal lies from the Board to the Supreme Court of Canada upon a question of law, . . .

That is the classical language that is used to create a right of appeal. That is a right of appeal and to that extent, of course, you would not use review, but an ordinary appeal provision.

Senator Hayden: That would be a matter of choice. There is nothing to prohibit the Governor in Council from dealing with the question of law after the Supreme Court of Canada made a pronouncement.

Mr. Maxwell: Exactly. The Governor in Council, regardless of a legal wrong or right can change it. It is a matter dealing with the problem as a policy issue. That is not an appeal at all in my view in ordinary technical legal language. This is the discussion that I have had back and forth with Mr. O'Brien in Montreal and I think Senator Connolly is concerned about the same point.

Senator Cook: It could be reviewed on facts which were not argued at all.

Mr. Maxwell: Certainly. That, as I understand it, is the point of concern that is reflected.

Senator Hayden: I added the words to Senator Cook's statement "where circumstances" which might include even a change of Government.

Mr. Maxwell: It might indeed. Gentlemen, I apologize, because I did not know that Senator Connolly was going to ask me just what statutes, and I cannot recall them at the present time. I did not have time to do my homework. I cannot really give you a detailed answer to his second question. I do not really think it matters, because in point of fact, what we are doing here in clause 29 is trying to have a very general scheme that will take care of not only the existing statute law, but statute law that may well result in the future. One may quarrel with the policy of this, but where a statute does give an appeal to the Governor in Council we feel it would be improper to try to have the court review, because really under normal circumstances such an appeal is given and there are some statutes where the Governor in Council is dealing with that problem on a policy basis ordinarily and not on a legalistic basis. It is not too well equipped to deal with a dispute in parties on a litigious basis.

Senator Hayden: Mr. Chairman, has our Law Clerk expressed any view?

Mr. Hopkins: I never like to repeat anything as well expressed as has been done by Mr. Maxwell. I agree entirely. I am not expressing a view on the question of policy. The policy apparently is that if there is an appeal provided, which is properly an appeal in the statute, the review procedure is excluded.

Mr. Maxwell: To the extent it can be appealed.

Mr. Hopkins: Yes, and that is the language of the section. I expressed my views with regard to the policy question. I have often wondered why it was that the other statutes weren't amended to provide for the review procedure instead of being the alternate to the statutory provisions.

Mr. Maxwell: That was considered and it was felt at this stage of development that a lot of people would feel we were taking something away and I think we need to have a little bit of experience.

Mr. Hopkins: We do amend some of the statutes.

Mr. Maxwell: Yes. We have left the appeal. The existing appeals have been left intact. The only thing we have done is to take the appeal directly from the Supreme Court and give it to the new Court of Appeal, because we feel that the Supreme Court of Canada should not have the initial and final appeal. We feel that is at least an improper use of the Supreme Court of Canada and it is one of the reasons why we have the new Federal Court of Appeal. That is the only change we have made in the right of appeal.

Mr. Hopkins: That is a question of policy.

Mr. Maxwell: I think, Senator Urquhart, that is all I can do.

Senator Hayden: Mr. Maxwell, if you want to make what you think is clear and absolutely clear you have to have a definition of appeal in the bill, that is, an appeal does not include the procedure by which you apply to the Governor in Council.

Mr. Maxwell: You are quite right. We could have written that kind of definition to deal with the Railway Act specifically. Indeed, that ran through my mind. I felt that really we did put in some words. We talked about appeals as such and things of that sort. You may think that is not much of an improvement. I thought it was a slight improvement over what we had. I feel quite strongly that there is no problem.

Senator Hayden: The ordinary connotation of the word "appeal" would include a petition to the Governor in Council. You notice I said the "ordinary connotation" of the word.

Mr. Maxwell: Perhaps, but you have to look at this thing in the context of the section in which it appears. For example, if it simply said that someone could petition the Governor in Council then the Governor in Council could do something and then one might say it is more of an appeal than this one. This power is one that really can be exercised without anybody taking an appeal at all. One may say it is more of an appeal than this one, but this is really one that can be exercised without anybody taking an appeal at all.

The Deputy Chairman: Honourable senators, are there any further questions? Are we in a position now to report the bill without amendment?

Hon. Senators: Agreed.

The Deputy Chairman: It is agreed that the bill be reported without amendment. Mr. Maxwell, on behalf of the Legal and Constitutional Affairs Committee, I should like to express our deep appreciation and thanks to you for attending three meetings of our committee in relation to Bill C-172. Your help and assistance and guidance and your legal expertise have been of inestimable value to us in arriving at a decision on this bill. We thank you very much indeed and we are looking forward to having you on other occasions before our committee, because we feel you are a good witness, you are well informed and you certainly do your homework well.

Mr. Maxwell: Thank you very much, Mr. Chairman. I certainly look forward to coming back.

APPENDIX "A"

Francis Gerity, Q.C.,
Suite 701, 20 King Street West,
Toronto.

November 26, 1970.

Denis Bouffard, Esq.,
Clerk, Committee on Legal and
Constitutional Affairs,
The Senate,
Ottawa, Canada.

Re: Bill C-172

Dear Sir:

Further to our telephone discussion of this afternoon and to the kind offer of your Chairman, Senator Urquhart, to hear members of our committee in respect of the above-mentioned Bill, I take this opportunity to put before the Honourable Senator and his Committee some observations in the light of these discussions.

(i) The committee of the Bar consisted in the Chairman of the Maritime Law Section (A. J. Stone, of Toronto) and Maitre Jean Brisset and myself.

(ii) Some lack of clarity in communications between the Department of Justice and our Association gave rise to a misunderstanding in respect of our previous submissions going forward to the Committee of the Lower House.

Secs. 2(b) 42 and 46

At this time, therefore,

(a) Maitre Brisset and myself do not seek to avail ourselves of the opportunity given by your Chairman to appear before the Committee. Mr. Stone is currently heavily engaged in the aircraft crash Inquiry (proceeding before Gibson, J.). In effect, in view of what has been said in (ii) above we have no desire to hold up the normal progress of the Bill at this stage, but

(b) in response to the kind offer made, I append hereto some of our observations in respect to the enumerated sections of the Bill, marginally noted, in the hope that they may be of assistance at this time.

Yours sincerely,

FG:DB

Copies to:

The Honourable E. W. Urquhart
D. S. Maxwell, Esq., Q.C.
A. J. Stone, Esq.
Jean Brisset, Esq., Q.C.

APPENDIX

Restated portions of letter to Deputy Attorney General of Canada dated March 16, 1970:

"SECOND: Of the comments mentioned, and enclosed with mine of February 24, I propose now to reduce these (since a large part of them have found their way into the Bill) to the following:

Sec. 2(b)

(i) Section 2(b) – I continue to find difficulty as to the need for a section in this form, since nowhere else in the whole statute do I find any further reference to "law" save in section 3 and I have not yet lost my original feeling that the statement in this form will not enlarge the jurisdiction but tend to narrow it.

In effect, if the Federal Court of Canada, on its admiralty side, is now to have unlimited jurisdiction in relation to maritime and admiralty matters (as conferred by this statute) and such jurisdiction as was exercised by it in the past, then the only necessity that I can see in this part of the Act is a definition of maritime law, *droit maritime*. I have already suggested that the association of the words "Canadian", "maritime" and "law" will result in litigation as to whether that was the law applied by the court prior to the coming into force of the Act and whether after that event the decisions of the courts of the several Provinces and other countries are to be a part of it."

Sec. 42

These remarks apply equally to Section 42. This section does nothing to clarify Section 2(b) but to reinforce the objection stated.

"(iii) These being sections not previously shown to me, I turn to section 46 – Rules. I believe it desirable to include amongst the enumeration of 46 (1) (a)

(x) rules providing for consular notice where the nature of the action and the national character of the ship indicate such necessity (see present Rule 47(a)),

(y) for the arrest of a sister ship of the same ownership, as an extension of the ordinary right in rem. It was said that this was to be provided in some other statute, but frankly I believe very strongly that it should be provided in this section and so given statutory force."

"It has been kind of you to receive these several memoranda and to devote time from your heavy engagements to their consideration."

At this time we also suggest the addition of certain words to subsection (ix):

(ix) rules governing the appointment of assessors and the trying or hearing of a cause or other matter wholly or partly with the assistance of assessors, *and to make part of the record the questions put and the answers given by the assessors, and"*

APPENDIX "B"

A BRIEF
FROM
THE BAR OF THE
PROVINCE OF QUEBEC

TO
THE GOVERNMENT OF CANADA

ON
BILL C-172

An Act respecting the Federal Court of Canada

First reading: March 2, 1970

November 1970

1. *Retirement Age*

At a time when average life expectancy is increasing, is it advisable to lower the retirement age from 75 to 70, as proposed under section 8(2) of the bill?

The federal Government doubtless intends to suggest that Parliament also lower the retirement age for judges of the Supreme Court of Canada and of county or district courts. We can assume that the federal Government has similar plans with respect to the higher provincial courts, but this would require an amendment to section 99(2) of the Constitution (added by the British North America Act (1960) and brought into force on March 1, 1961), which prescribes 75 as the retirement age for judges of these courts.

At the very least, should not the federal Government preserve the present uniformity with respect to the retirement age for all the judges it appoints—in other words, wait until it is in a position to lower the retirement age for judges of higher courts before lowering that for the other judges?

2. *The Oath of Office*

(The members of the Quebec Bar are not unanimous on this point)

Are not the oath of office and the oath of allegiance outdated formalities devoid of any legal significance? The oath of office adds nothing to the obligations of the person who swears it, and is never invoked against him. Nor is it necessary to use a person's oath of allegiance against him in order to secure a conviction on a charge of treason or sedition, even under a monarchical system.

Are not these things vestiges of feudalism and of an age when such solemn undertakings had practical significance they have long since lost? One may even doubt whether they have retained any psychological or educational value to justify the waste of time and the pointless paperwork involved in administering them, and the risk of legal complications—inherent in the requirement that the oath of office be sworn.

Should not this oath be replaced by a formal acceptance of the appointment in question?

3. *The Constitutional Aspect*

1. *The jurisdiction of the Federal Court should be restricted to federal legislation (as opposed to federal legislative power that has not been exercised and matters of law that are provincial responsibilities).*

A number of provisions in the bill (like the corresponding ones in the existing Act) give the Court exclusive or concurrent jurisdiction with respect to disputes involving the federal Government or a "federal board, commission or other tribunal" (these terms being defined in the bill), or concerning matters in which the Parliament of Canada has power to legislate, *even if such disputes do not otherwise turn on any federal law or regulation.*

This is so in the case of such sections as:

<i>Bill C-192</i>	<i>Existing Act (the Exchequer Court Act, R.S.C. 1952, c. 98)</i>
17(1)	18(1)(a), (b), (c), (d), and (f)
17(2)	17, 18(1)(a), (b) and (h) and 19
17(3)(a) and (b)	18(1)(g)
17(3)(c)	24
17(4)(a)	29(a) and (d)
17(4)(b)	29(c)
17(5)	18(1)(j)
19	30(1)
20	21
23	(no corresponding provision)

Going into greater detail with respect to two of these examples, we would note that:

a) section 20 of the bill, in addition to granting the Trial Division of the Federal Court exclusive jurisdiction in cases of conflicting applications for patents of invention or for the registration of copyrights, trade marks or industrial designs, and in cases of applications to annul patents or to have an entry in a register of copyrights, trade marks or industrial designs made, expunged or varied, grants it concurrent jurisdiction "in all other cases in which a remedy is sought under the authority of any Act of the Parliament of Canada or at common law or in equity, respecting any patent of invention, copyright, trade mark or industrial design"; and that

b) section 23 of the bill (which is new, except insofar as it applies to railways within a province) grants it "concurrent original jurisdiction as well between subject and subject as otherwise, in all

cases in which a claim for relief is made or a remedy is sought under an Act of the Parliament of Canada *or otherwise* in relation to any matter coming within the class of subject of bills of exchange and promissory notes, aeronautics, or works and undertakings connecting a province with any other province or extending beyond the limits of a province, except to the extent that jurisdiction has been otherwise specially assigned.”

Now, there are strong grounds for maintaining that the term “laws of Canada” in section 101 of the Constitution means “federal Acts” or “federal law”, which probably includes legislation enacted by the Parliament of Canada, regulations made under its authority and jurisprudence interpreting either.

Section 101 reads as follows:

“The Parliament of Canada may, notwithstanding any thing in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.”

«Le Parlement du Canada pourra, nonobstant toute disposition contraire énoncée dans le présent acte, lorsque l'occasion le requerra, adopter des mesures à l'effet de créer, maintenir et organiser une cour générale d'appel pour le Canada, et établir des tribunaux additionnels pour la meilleure administration des lois du Canada.»

Before going any farther, let us note that the federal Government demonstrates a measure of prudence on this point by suggesting the following definition in section 2(j) of the bill:

“2(j) ‘laws of Canada’ has the same meaning as those words have in section 101 of The British North America Act, 1867.”

«2(j) «droit du Canada» a le sens donné, à l'article 101 de l'Acte de l'Amérique du Nord Britannique, 1867, à l'expression «Laws of Canada» traduite par l'expression «lois du Canada» dans les versions françaises de cet Acte.»

In *The King v. Hume and Consolidated Distilleries Limited and Consolidated Exporters Corporation Ltd.*, (1930) R.C.S. 531, pp. 534-5, Anglin C. J. of the Supreme Court of Canada, having cited section 101, gives the following opinion on the question that concerns us here:

“It is to be observed that the “additional courts”, which Parliament is hereby authorized to establish, are courts “for the better administration of the laws of Canada”. In the collocation in which they are found, and having regard to the other provisions of the British North America Act, the words, “the laws of Canada”, must signify laws enacted by the Dominion Parliament and within its competence. If they should be taken to mean laws in force anywhere in Canada, which is the alternative suggested, s. 101 would be wide enough to confer jurisdiction on Parliament to create courts empowered to deal with the whole range of matters within the exclusive jurisdiction of the provincial legislatures, including “property and civil rights” in the provinces, although, by s. 92 (14) of the British North America Act,

“The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts”

is part of the jurisdiction conferred exclusively upon the provincial legislatures”.

It is significant that in the second sentence of the opinion we have just quoted, Anglin C. J. (who was speaking here on behalf of Rinfret, Lamont and Cannon JJ.) specifies federal *legislation*, not just the power to legislate. On p. 535, he states:

“While the law, under which the defendant in the present instance seeks to impose a liability on the third party to indemnify it by virtue of a contract between them, is a law of Canada in the sense that it is in force in Canada, it is not a law of Canada in the sense that it would be competent for the Parliament of Canada to enact, modify or amend it.”

Thus, in the opinion of the Supreme Court as expressed in this matter, section 101 does not permit the Parliament of Canada to grant the “additional Courts” it provides for jurisdiction in matters within its competence concerning which it has not enacted laws. The “additional Courts” are distinguished here from the “General Court of Appeal for Canada” that this section authorizes Parliament to establish (and which it has in fact established as the Supreme Court of Canada). If the intention had been to permit Parliament to grant the “additional Courts” powers as extensive as those of the “General Court of Appeal”, i.e., covering matters of provincial responsibility as well as federal legislation, then Parliament would simply have been empowered to establish courts with original and appeal jurisdiction for Canada, in addition to those constituted by the provinces under section 92(14). The terms used by the British Parliament in section 101 strongly suggest that it intended to limit the jurisdiction of federally-constituted “additional Courts” (in contrast to that of the “General Court of Appeal”). The necessary conclusion from this is that in the context, “laws of Canada” means only federal Acts.

Now, in interpreting section 101, it is essential to take into account two other distinctions that we believe to be universally recognized: those between

a) legislative power and its exercise, and those between

b) what is (perhaps incorrectly) called “substantive law”, which creates and regulates legal rights and institutions, and judicial law, which regulates judicial procedure and jurisdiction.

Is it not perfectly legitimate – and even imperative – to suppose that Parliament in Westminster was aware of these distinctions and intended to observe them? If so, we must avoid confusing, first, the laws enacted by the Parliament of Canada (“laws of Canada”) with its legislative powers, and second, its “substantive” and its judicial legislation. To return to the above decision of the Supreme Court, we are thus bound to conclude that section 101 does not permit the Parliament of Canada to extend the jurisdiction of the Federal Court to disputes (even those involving the federal Government or a federal agency) dealing with subjects within its competence, but not

with "substantive" provisions it has enacted concerning such subjects.

If we are correct, the words "at common law or in equity", for example, would have to be deleted from section 20 of the bill, as would the words "or otherwise" from section 23. The other sections of the bill to which we have referred would have to be amended so as to limit their application to disputes in connection with federal legislation.

We do not claim it is necessary for them to specify that the federal legislation in question must be "substantive". We believe this will then emerge clearly from the text. Our purpose in recalling this second distinction is to refute, in advance, any claim that provisions which, like those of the bill and of the existing Act, regulate the jurisdiction of a federal court, are "laws of Canada" within the meaning of section 101 (even if this is taken to mean only federal laws), and that it is therefore sufficient for Parliament to provide that any court it establishes will be able to hear any matter concerning bills of exchange, patents of invention, works or undertakings extending beyond the limits of a province, and so on, in order for such a court to consider itself thereby established "for the better Administration of the Laws of Canada".

Admittedly, the authorities on this question are not very satisfactory. *In re The Board of Commerce Act, 1919*, (1922) 1 A.C. 191, p. 199, 2 Olmsted 245, p. 252, the Privy Council found as follows:

"For analogous reasons the words of head 27 of s. 91 do not assist the argument for the Dominion. It is one thing to construe the words "the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters," as enabling the Dominion Parliament to exercise exclusive legislative power where the subject matter is one which by its very nature belongs to the domain of criminal jurisprudence. A general law, to take an example, making incest a crime, belongs to this class. It is quite another thing, first to attempt to interfere with a class of subject committed exclusively to the Provincial legislature, and then to justify this by enacting ancillary provisions, designated as new phases of Dominion criminal law which require a title to so interfere as basis of their application. For analogous reasons their Lordships think that s. 101 of the British North America Act, which enables the Parliament of Canada, notwithstanding anything in the Act, to provide for the establishment of any additional Courts for the better administration of the laws of Canada, cannot be read as enabling that Parliament to trench on Provincial rights, such as the powers over property and civil rights in the Provinces exclusively conferred on their Legislatures. Full significance can be attached to the words in question without reading them as implying such capacity on the part of the Dominion Parliament. It is essential in such cases that the new judicial establishment should be a means to some end competent to the latter."

The question at issue was federal legislation establishing an administrative and judicial body responsible for preventing commodity hoarding monopolies and price manipulation. The Privy

Council declared the legislation unconstitutional, but with regard to section 101, it made no reference whatever to the distinctions we have made between legislative power and its exercise and between "substantive" legislation and that which concerns only remedies and procedure.

In *Consolidated Distilleries Limited and another v. The King* (1933) A.C. 508, p. 522, 3 Olmsted 73, p. 86, in which the issue was what is now section 29(d) of the Exchequer Court Act, which corresponds in turn to section 17(4)(a) of the bill (which, however, mentions neither common law nor equity), as well as a guarantee given to the Government under — the federal Inland Revenue Act, the Privy Council found as follows:

"Their Lordships, however, have come to the conclusion that these actions do fall within sub-s. (d). It was suggested that if read literally, and without any limitation, that sub-section would entitle the Crown to sue in the Exchequer Court and subject defendants to the jurisdiction of that Court, in respect of any cause of action whatever, and that such a provision would be ultra vires the Parliament of Canada as one not covered by the power conferred by s. 101 of the British North America Act. Their Lordships, however, do not think that sub-s. (d), in the context in which it is found, can properly be read as free from all limitations. They think that in view of the provisions of the three preceding sub-sections the actions and suits in sub-s. (d) must be confined to actions and suits in relation to some subject-matter, legislation in regard to which is within the legislative competence of the Dominion. So read, the sub-section could not be said to be ultra vires, and the present actions appear to their Lordships to fall within its scope. The Exchequer Court accordingly had jurisdiction in the matter of these actions."

If the terms used here can be taken to mean that, unaware of the distinction between the legislative powers of Parliament and the legislation it enacts in the exercise of those powers, and perhaps the distinction between "substantive" and "judicial" legislation, the Privy Council found in that case that a provision extending the jurisdiction of the "additional Courts" mentioned in section 101 to cover all disputes involving the federal Government is valid with respect to disputes concerning subjects within the legislative competence of the Parliament of Canada . . . (sentence incomplete — Tr.). However, in this case it was not only section 29(d) of the Exchequer Court Act that was involved, but also the Inland Revenue Act, R.S.C. 1906 c. 51, which has now become the Excise Act, and the Regulations pursuant thereto.

In *Kellogg Company v. Helen I. Kellogg*, (1941) R.C.S. 242, The Supreme Court decided that, notwithstanding its previously mentioned decision in *The King and Hume And Consolidated Distilleries Ltd. and Consolidated Exporters Corporation Ltd.*, the Exchequer Court could pronounce on a contractual question on which depended the right to a patent of invention, by virtue of the Patent Act and section 22 (c) of the Exchequer Court Act (now section 21(c), which is the same as the last paragraph of section 20 of the bill). However, the Supreme Court was very careful to point out that it was limiting itself to interpreting the relevant sections of the Patent Act and the Exchequer Court Act, without taking any

position on the constitutional question, which had not been raised. Its reservation was phrased as follows: (pages 250-1):

"No question was raised before us or before the Exchequer Court as to the constitutionality either of paragraph (iv) of subsection 8 of s. 44 of the Patent Act, or the constitutionality of subs. (c) of s. 22 of the Exchequer Court Act. No proceedings were directed to that issue. No notices to the Attorney-General of Canada, or to the Provincial Attorneys-General, was given of any intention to raise such a point. We are limiting our judgment to the interpretation of the relevant sections of the Exchequer Court Act and of the Patent Act as we find them in the statutes. Upon the construction of these sections, we are of opinion that the Exchequer Court has jurisdiction to hear and determine the issue raised by paragraph 8 of the appellant's statement of claim and by sub-paragraphs (c) and (d) of the conclusions."

2. The jurisdiction of the Federal Court could validly include the supervision and review of the proceedings and decisions of federal bodies.

Section 18 of the bill gives the Trial Division of the Federal Court exclusive jurisdiction to hear and determine any claim for relief (by certiorari, mandamus, prohibition or quo warranto or in any other way) against a federal board, commission or other tribunal.

Section 28 reserves for the Federal Court of Appeal the power to review the decisions of federal boards, commission or other tribunals (except for those of an administrative nature not required to be made on a judicial or quasi-judicial basis).

We do not believe we have to challenge the constitutionality of these two sections, taking for granted the constitutionality of the acts governing federal bodies.

Assuming this, sections 18 and 28 of the bill have the same effect as if they were part of these acts and their purpose is to give the Federal Court jurisdiction "for the better administration of the laws of Canada", i.e. the substantive laws governing such bodies.

Such an interpretation at least appears very tenable, and if it is well founded, we do not believe there is cause to object to the Federal court's supplanting in this way the superior provincial courts, which until now have had the responsibility for the supervision, not only of the lower courts, but also of government bodies (federal and provincial), as well as reviewing their decisions. On the claim that, according to the Confederation debates, the appointment of judges of superior provincial, district and county courts was given to the Federal Government (section 96 of the Constitution) because of or in exchange for the jurisdiction of such courts or some of them over federal bodies, the fear was expressed that the supplanting of the provincial courts by the Federal Court may lead, in Quebec, to that of the Superior Court by the Provincial Court, whose judges are appointed by the Provincial Government, and eventually lead to the relinquishing by the federal government (by a Constitutional amendment), of its right to appoint the provincial judges referred to in section 96. An encouragement to separatism can seemingly be seen there. We, for our part, see no valid reason to refuse to the Provinces the power to appoint the

judges of courts instituted by them and to reorganize these courts perhaps more freely than they can now do.

4. Appeals to the Supreme Court of Canada

Section 31 and 32 of the bill change and simplify sections 82, 83 and 84 of the present bill governing the right to appeal. To sum up, at this time only the following judgments of the Exchequer Court can be appealed to the Supreme Court.:

(a) *de plano*, i.e. without permission, final judgments and judgments on demurrers or points of law raised in pleadings;

(b) with the permission of a Supreme Court judge, interlocutory judgments, and only if "the actual amount in controversy" exceeds \$500 or if a Supreme Court judge grants permission to appeal and if it concerns the validity of a federal or provincial Act, or a Government debt, real property rights, annual rents annuities, professional property, future rights or an important precedent for the Government or the public.

The bill proposes as a general rule the right to appeal "on a question that is not a question of fact alone, from a final judgment directing a new trial" of the Federal Court of Appeal... where the amount or value of the matter in controversy in the appeal exceeds ten thousand dollars". Excepted from the rule, however, are judgments of the Federal Court of Appeal revising decisions of federal boards, commissions and other tribunals in accordance with section 28 of the bill.

The bill proposes also the right to appeal to the Supreme Court with leave of the Federal Court of Appeal "where, in the opinion of the court of Appeal, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision". Any judgment of the Federal Court of Appeal would come under this provision.

Subsection (3) of section 31 of the bill provides, also, for appeal to the Supreme Court, with leave of the latter, of any judgment (final or other) of the Federal Court of Appeal.

Finally, section 31 provides for an appeal "*de plano*" of any decision of the Federal Court of Appeal "in the case of a controversy between Canada and a province or between two or more provinces".

We do not think that the Quebec Bar should object to this reform of the right to appeal

5. Miscellaneous

1. Place of sittings

Even the Court of Appeal may sit at any place arranged by the Chief Justice to suit, as nearly as may be, the convenience of the parties (subsection (3) of section 16). The Trial Division, like the present Exchequer Court, may sit "at any time and at any place in Canada". We certainly think that this gives easier access to justice and to government administrative services.

2. *Review of decisions of federal boards, commissions and other tribunals (section 18 and 28)*

The sharing of jurisdiction in this respect between the Trial Division and the Court of Appeal is not very clear-cut. Subsection (3) of section 28 assigns exclusive jurisdiction to the Court of Appeal and excludes that of the Trial Division with respect to any "application to review and set aside a decision or order".

Also, subparagraph (b) of section 18 leaves much to be desired.

5. *Bills of exchange (section 23)*

Attention should be drawn to the assignment to the Federal Court of this new concurrent jurisdiction (which extends, by the terms of clause 23, to aeronautics and to extra-provincial works and undertakings). Besides the doubts we have about the constitutional question (c.f. particularly page 3 of this brief), we are opposed to any jurisdiction over matters arising out of the Bills of Exchange Act, which jurisdiction should not be given to the court because of the difficulty of dissociating the instrument, the bill of exchange, from the circumstances of its use. (This recommendation is not unanimous).

4. *Prescription (section 38)*

We fully agree with the new provision subjecting the Government to the same limitation as those it administers.

5. *Disclosure of government documents-public interest (section 41)*

One may perhaps wonder whether section 41 places enough confidence in the court, since subsection (2) refuses to the court the power to examine a certain class of documents and to rule on the need to remove such documents from legal rules and requirements. However, we should, we think, at least be glad of the clarification, by these provisions, of the present Act. Jurisprudence has left something to be desired in this rather delicate matter.

We should point out, however, what appears to be a slight error in the French text; in the tenth line, the word "ou" should be replaced by the word "et". The English text reads: "order its production *and* delivery to the parties", where the French text reads "ordonner de produire *ou* d'en communiquer la teneur aux parties".

6. *How a proceeding against the Government is instituted (section 48)*

We fully agree with the simplification of the procedure (originating document is simply filed with or sent by registered mail to the Registry of the Federal Court and served by an officer of the Registry on the Deputy Attorney-General of Canada).

In Schedule A, under "Redressement demandé" ("Relief Sought"), the word "demande" should perhaps be replaced with the word "réclame", since the English text has the word "claims".

7. *Evidence (section 53)*

Section 36 of the Canada Evidence Act makes applicable to "proceedings over which the Parliament of Canada has legislative author-

ity, the laws of evidence in force in the province in which such proceedings are *taken*". This "law of the forum" has the effect of making only the Ontario Act applicable among the provincial Acts. The fact is that proceedings before the Exchequer Court (Federal Court) are always commenced at Ottawa, and therefore in Ontario. That is perhaps what led the federal Department of Justice to propose, in subsection (2) of section 53 of the bill, a new admissibility rule which would allow the Federal Court to accept any evidence that would be admissible in a superior court of any province in accordance with the law or custom in any province. We should mention in passing that the English text reads in part "if it would be admissible in a similar matter in a superior court of a province in accordance with the law or custom in force in *any* province", whereas the French text reads "si, selon le droit ou la coutume en vigueur dans *une* province, elle est admissible en pareille matière devant une cour supérieur de *cette* province" (of *such* province).

Why not adopt the rule that the law of the law of the province in which the cause of action arises shall apply, as in section 38 for prescription?

We make this recommendation even though, in practice, the court will perhaps exercise the discretion conferred on it by subsection (2) so as to combine as equitably as possible the criterion of place of origin of the cause of action with that of the place in which the preliminary investigation will take place. It should be noted that subsection (2) makes a reservation that the relevant rules shall apply, ("subject to any rule that may relate to the matter").

8. *Contents of the reports of the decisions (subsection (2) of section 58)*

Subsection (2) of section 58 leaves to the discretion of the editor of the official reports, the selection of the decisions that will be published in full or in part. We recommend that such discretion be limited to the selection of those decisions that will be published in full and those of which only a summary will be published. In other words, it is our opinion that the editor should be prohibited from leaving any decision out completely.

9. *Bilingual law reports subsection (4) of section 58*

We must be glad of this legislative innovation, which follows that already made, without any law, in the Supreme Court Reports.

However, we think it would be preferable to print the French and English texts in the Supreme Court Reports on separate pages instead of on the same page in two columns.

10. *Canadianization*

We approve also of the Canadianization of the law by the elimination of borrowings from British law (law and practice of the High Court of Justice of England).

11. *Titles of the clerk and of his assistants (section 12)*

Finally, it is perhaps not without interest to note that the "registrar" of the court and his assistants will become "protonotaries" ("protonotaires").

THE QUEBEC BAR
per (Signed)



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

No. 4

WEDNESDAY, DECEMBER 2, 1970

Complete Proceedings on Bill S-8,
intituled:
"AN ACT TO AMEND THE CRIMINAL CODE"

REPORT OF THE COMMITTEE

(Witness:—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hollett
Aseltine	Lang
Belisle	Langlois
Burchill	MacDonald (<i>Cape</i>
Choquette	<i>Breton</i>)
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McGrand
Croll	Méthot
Eudes	Petten
Everett	Prowse
Fergusson	Roebuck
*Flynn	Smith
Gouin	Urquhart
Grosart	Walker
Haig	White
Hayden	Willis

*Ex officio member

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
Thursday, November 26, 1970:

Pursuant to the Order of the Day, the Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Haig, that the Bill S-8, intituled: "An Act to amend the Criminal Code", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Haig, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, December 2, 1970

(4)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:30 a.m.

Present: The Honourable Senators: Urquhart (*Deputy Chairman*), Burchill, Cook, Croll, Eudes, Fergusson, Gouin, Haig, Hayden, Hollett, Langlois, Macdonald (*Cape Breton*), McGrand and Prowse. (14)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill S-8, intituled: "An Act to amend the Criminal Code".

The following witness was heard in explanation of the Bill:

Mr. W. J. Trainor, Criminal Law Section, Legal Branch, Department of Justice.

The Honourable Senator Macdonald (*Cape Breton*) moved that the said Bill be amended as follows:

1. *Page 2:* Strike out clause 4.
2. *Page 3:* Renumber clause 5 as clause 4.

The question being put on the said Motion it was Resolved in the affirmative.

On Motion of the Honourable Senator Macdonald (*Cape Breton*) it was Resolved to report the said Bill as amended.

At 12:15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Wednesday, December 2, 1970.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-8, intituled: "An Act to amend the Criminal Code", has in obedience to the order of reference of November 26, 1970, examined the said Bill and now reports the same with the following amendments:

1. *Page 2*: Strike out clause 4.
2. *Page 3*: Renumber clause 5 as clause 4.

Respectfully submitted.

Earl W. Urquhart,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Wednesday, December 2, 1970.

[Text]

The standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-8, to amend the Criminal Code, met this day at 11.30 a.m. to give consideration to the bill.

The Deputy Chairman: Honourable senators, we have Bill S-8 before us for consideration this morning, an act to amend the Criminal Code. We have the sponsor of the bill with us, Senator John M. Macdonald. He gave a very fine analysis of the bill on second reading in the Senate chamber.

Our witness this morning is Mr. W.J. Trainor of the Criminal Law Section of the Department of Justice.

Mr. W. J. Trainor, Criminal Law Section, Department of Justice: Mr. Chairman, I wonder if I might ask your indulgence for a few minutes as I wish to discuss this matter with Mr. Maxwell before I appear?

The Deputy Chairman: Very well, we will give you five minutes. In the meantime, perhaps Senator John M. Macdonald would quickly review the bill for the members of the committee.

Senator Macdonald: Mr. Chairman and honourable senators, the chief points of this bill were explained not only in this session but when it was introduced last year. They are briefly given in the explanatory note, which shows what I had in mind:

At present under section 280 the punishment for theft is greater when the value of what is stolen exceeds \$50.

This has been in effect at least since 1954. I think that prior to that time there were many offences. Instead of a blanket one, they had an offence, for example, of destroying a hedge or stealing some things of various types. At that time there was a kind of consolidation and they drew a line as whether a theft was something over the value of \$50 or under \$50.

What I propose here is simply that we change that dividing line. I think it is well known that since 1954 values have changed to a great extent. At that time it might have been a serious offence to steal something of the value of \$50 but today it might be a very minor offence if a person stole something of the value of \$50. I think the value should be placed at \$200. I must say that there was no special reason why I made that \$200. Due to inflation, values have changed greatly, but I did not try to find out what would be the value today of something which was worth \$50 in 1954. I think the time factor is sufficient to enable us to change the dividing line and I suggest that change in the general sections dealing with theft. I felt

it would be better if we could make sure of the dividing line between what might be called a minor and a major theft, by changing the amount to, say, \$200. Perhaps it would have been better to make it \$500, but I am in the hands of the committee as far as that is concerned.

The Deputy Chairman: Honourable senators, this is Mr. Trainor from the Law Section of the Department of Justice, who asked for five minutes so that he could consult with Mr. Maxwell, the deputy minister.

Senator Hayden: I do not know if we are to get a general statement from him. I notice you have carried through what is in the Code at the present time "liable to imprisonment for ten years". Very often bills have come before us dealing with imprisonment for "up to ten years", indicating that ten years is the maximum. Is there anything anywhere which states the purport, whether it is a specific penalty, or that it may be applied in the range up to ten years, even though it says "for ten years".

Mr. Trainor: I do not know of any specific case dealing with these exact words, but I know that there have been a number of cases dealing with the expression "is liable to" a penalty of so many years, and the courts have already noted, in respect to that expression, that it means "up to a maximum of". Where it says that a person is liable to a penalty of a certain number of years, it seems to me that the same interpretation would be made.

Senator Hayden: Our problem is that when bills come before us—and I can recall some recently—they use the expression "up to" indicating that it is the maximum. Is this modernized thinking in the department, that they should be more specific?

Mr. Trainor: I am afraid I am not really in a position to make a comment on the view that the draftsman had taken in respect to that. I have not had an opportunity of discussing it with him, so I do not know.

Senator Prowse: This wording is no different from the wording in the original act?

Senator Hayden: What I am referring to is the wording and language used in bills more recently coming before us.

Senator Prowse: Looking at the Code, it says "liable to" and it certainly interprets it in that way. As I understand it, the only change that is being made by this bill is that the \$50 figure will become \$200, in the penalty section.

Senator Hayden: What I wanted to know was why we have the change in the language in the other bills now coming before us. Is it because it is a better description?

Mr. Trainor: The only thing I can say is that this must be the case, or otherwise it would not be done. Someone must have considered that this would be more explicit in that fashion.

Senator Langlois: Is there any objection, Mr. Trainor, to changing the wording to read "up to" instead of "for"?

Mr. Trainor: Perhaps before we get too far, I should make our position in the department clear, that is, that we are not taking any position really with respect to this bill, we are not opposing it, and we are not endorsing it.

Senator Cook: You are not making yourself liable for anything.

Mr. Trainor: The only thing I am doing is coming here to make myself clear before this committee and to express that view that that is our position.

Senator Langlois: Let us get to the actual section that we are dealing with. Would there be any objection to changing it to read "up to"?

Mr. Trainor: No, if it does add that amount of clarity.

Senator Hayden: I wonder if Senator Macdonald has any objection?

Senator Macdonald: No, none in the world.

The Deputy Chairman: Mr. Hopkins, would you care to comment?

E. Russell Hopkins, Law Clerk and Parliamentary Counsel: That is purely a question of policy. I understand that the only change Senator Macdonald intended was in the amounts.

The Deputy Chairman: Is that right, Senator Macdonald?

Senator Macdonald: That is correct.

Senator Cook: Would the \$200 be tied to the cost of living?

Senator Hayden: Should there be an escalation?

Senator Prowse: Section 456 gives the magistrate absolute jurisdiction. In other words, if I had someone now charged with stealing something worth \$199.99 I would not have a choice of electing whether I go before a judge. I am absolutely set to have my trial in the magistrate's court.

In other words, while we are changing penalties on the one hand, we are restricting jurisdiction and the remedies available to the accused on the other. He now goes before the magistrate and from there directly to the Appeal Court. There is certainly an advantage from the defence point of view at the present time, particularly in cases involving false pretenses and one or two other sections, by first of all having a preliminary hearing wherein the Crown sets out the evidence upon which it depends. This is not always the case in a magistrate's court. There is also the opportunity to observe the witnesses and discover possible weaknesses in their evidence before

going to trial. This more carefully safeguards the rights of the accused.

The reason I saw for that difference in the past was that in the case of a small amount it was not desirable to put everyone to the expense and difficulty of a trial. This is the case at least in my province, where we have the preliminary hearing rather than the grand jury system for indictments.

Therefore I am very concerned about that. I am not sure that we are doing people a favour, as appears on the face of it because we are getting it down. Although an accused may be liable to a certain penalty as interpreted by the courts, in the case of a small amount this is one of the factors taken into consideration in sentencing. We do not have sentences of 10 years for thefts of \$200. I wonder if section 456 restricts the rights of the accused and deprives him of something he now has? This would cover the majority of theft cases. If the accused wishes to be tried by a magistrate, he can so elect.

Mr. Trainor: I agree completely that one of the aspects of this bill is that the absolute jurisdiction of the magistrate is increased.

Senator Hayden: It is increased from \$50 to \$200.

Mr. Trainor: Yes, it would take from people accused of crimes in that area, between \$200 and \$1,000 theft or related offences, the right to elect for trial before judge alone or judge and jury.

Senator Hayden: On the other hand, the exposure is to a lesser penalty.

Senator Prowse: Not really, because it is up to five years, or ten.

Senator Hayden: No, I say the exposure.

Senator Prowse: I do not think anyone worries about that.

Mr. Hopkins: Throughout the Criminal Code and the changes in practice mentioned by Senator Hayden we are referring to the penal provisions in other statutes, rather than the specific amendments to the Code. They are usually spelled out in this form. Are they interpreted as being up to? Is that the way in fact they are interpreted?

For example, section 292, an indictable offence, is liable to imprisonment for life.

Senator Prowse: A person can be convicted of theft for sums up to half a million dollars. I have two or three in mind in which the sentences were three years.

Mr. Hopkins: What is the interpretation regularly placed upon the provision liable to imprisonment up to 14 years?

Mr. Trainor: The courts have interpreted that they are subject to a penalty of the maximum stated.

Senator Hayden: The bill on the Statistics Act which we had before us recently provided for a maximum of such and such, instead of saying to a definite number of years.

Mr. Hopkins: That is right, but this is rather the pattern of the Code.

Senator Hayden: The last revision of the Code was in 1954.

Mr. Hopkins: Am I not correct in thinking that the Criminal Code is under course of revision as a priority matter by the Law Reform Commission?

Mr. Trainor: I am told that this is so.

The Deputy Chairman: So the wording here is consistent with that in the new Code?

Senator Prowse: If it did anything it might confuse the issue and call for a real interpretation by the courts.

Senator Hayden: Mr. Chairman, I did not ask for an amendment, but an explanation for the change in language. I agree that if changes are made in some places in the Code and the language in other places left as it is a problem of interpretation is posed.

Mr. Trainor: There appear to be a few technical errors in the bill itself. The word "or" has been substituted for the word "and" in section 467, paragraph (a). I do not think the meaning is affected.

Senator Prowse: The word "or" appears in the original last section.

Mr. Trainor: It appears in the second line following subsection (a) (iii) in section 467.

Mr. Hopkins: I think that was done deliberately in order to make it consistent with the other sections in this sequence. "Or" is usually used; that was not inadvertence.

Mr. Trainor: The word "and" appears in the seventh line in the last section of the bill. I believe that should read "had".

Mr. Hopkins: That is a typographical error which does not require an amendment. I will see that it is corrected.

Senator Hayden: In sections 1, 2 and 3 you are dealing with indictable offences. All you are saying is that if the amount stolen is more than a certain amount the penalty varies, but there is on an indictable offence the right of election.

Senator Prowse: Not under \$50, in section 467.

Mr. Trainor: The magistrate has absolute jurisdiction where the amount is presently under \$50.

Senator Prowse: His jurisdiction is absolute; it does not depend upon the consent of the accused where the accused is charged in an information with this offence. It is an indictable offence all right.

Senator Hayden: Are we really by the change in language making that summary jurisdiction of the magistrate effective up to \$200?

Mr. Trainor: That is right.

Senator Prowse: Section 467 is changed now, making it absolute. That is clause 4 of our bill.

Mr. Trainor: Clause 4, yes.

Senator Prowse: That is the one that gives him absolute jurisdiction, and this is the thing that concerns me, because it affects the other things we have dealt with; this is where the figure comes in.

Senator Hayden: We are making it a straight summary trial with no election.

Mr. Trainor: That would be the effect.

Senator Prowse: No election; you are stuck with the magistrate.

The Deputy Chairman: In the gap between \$50 and \$200 the magistrate has absolute jurisdiction now and there is no election on the part of the accused.

Mr. Hopkins: Whereas formerly there was.

Senator Prowse: There are times when this becomes pretty darned important. Attempts have been made to upgrade magistrates, and I think we have done pretty well, but we still have the situation, particularly in country courts, where there may be a magistrate who has no idea of the law; then you have to take his record, and he may have gummed up your whole trial, simply through ignorance.

Senator Macdonald: My contention is that we are not really narrowing it too much, and the magistrate already has jurisdiction up to \$50; his jurisdiction has been narrowed because of the fact that something valued \$50 at the time of this enactment was worth a lot more than \$200 in dollar value today. However, on balance it remains pretty much the same.

Senator Prowse: What I am concerned about is this. If a person is convicted, it does not matter whether it is stealing 25 cents; with a conviction against him for any of these offences he loses his chance of getting bonded, or if he happens to have a job where he is bonded he loses it. I can cite the case of three fellows who went out on a bit of a spree and stole a parking meter. They ended up with suspended sentences. Two of them were milk drivers and the other was a truck driver. All three were bonded, and they lost their bonds and lost their jobs. Where those consequences flow, I do not think a person should lose the right to election. If the change in money values has extended that right to some other people, I think this is in the interests of the subject, which I believe the law should be, which I presume is what you have in mind with this bill, but I think that what you take away is far more than you give.

The Deputy Chairman: Have you anything to say on that?

Mr. Trainor: No. That is a question of policy and I do not think I should comment on it.

The Deputy Chairman: Senator Macdonald, have you anything to add?

Senator Macdonald: No, except that I think on balance he is in the same position. He loses the choice, but on the other hand the penalty to which he is exposed is so much less, so on balance he is in pretty much the same position.

Senator Prowse: I would agree, except for section 456. I am concerned because the effect of section 456 is that this narrows the rights available to an accused; it does not expand them.

The Deputy Chairman: Mr. Trainor, are you going to give us anything affirmative or positive on this bill?

Mr. Trainor: No, I am not in a position to do that.

Senator Hayden: What you are suggesting, Senator Prowse, is that even if the substance of the bill is left as it is, and has a provision respecting the amount taken being in excess of \$50 and not more than \$200, the right of election should remain?

Senator Prowse: As a matter of fact, I have always felt that there should not be absolute jurisdiction where such serious consequences can flow from a secondary offence.

Senator Hayden: If you did that it would not be hurting any accused person because he could elect summary trial.

Senator Prowse: If he could elect I would have no objection.

Senator Hayden: Perhaps Senator Macdonald would review the discussion we have had and propose some change.

Senator Macdonald: Would you be satisfied if we perhaps deleted clause 4 altogether.

Senator Prowse: If clause 4 were deleted all my objections would disappear.

Mr. Hopkins: It would not affect the rest of the bill.

Senator Prowse: It would not affect jurisdiction at all.

Mr. Hopkins: The subsequent clauses would have to be renumbered, which would be a simple matter.

The Deputy Chairman: Is it agreed then, that we delete clause 4 of the bill?

Mr. Hopkins: And renumber the subsequent clauses.

The Deputy Chairman: And renumber the subsequent clauses.

Senator Hayden: Does the sponsor of the bill (Hon. Mr. Macdonald) propose the deletion of the clause formally.

The Deputy Chairman: We will get him to move it.

Senator Macdonald: I move that clause 4 be deleted.

The Deputy Chairman: Is that agreed?

Hon. Senators: Agreed.

Senator Haig: Perhaps we should delete the whole bill, just on general principle!

The Deputy Chairman: Following that motion to delete clause 4, are we now in a position to report the bill with that amendment?

Senator Hayden: There is one point we have not considered. We are offering an invitation to people so that they can afford, without affecting their rights, to steal a little more money; they can steal up to \$200 and not lose any rights, whereas prior to the passing of this bill they could steal only up to \$50.

Senator Langlois: This is inflation.

Senator Prowse: They are still liable to five years' imprisonment, although nobody gets that much anyway, so I am not sure it makes much difference.

The Deputy Chairman: Mr. Hopkins suggests it is inflationary theft!

Is there anything further, honourable senators? Shall we report the bill as amended?

Hon. Senators: Agreed.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

No. 5

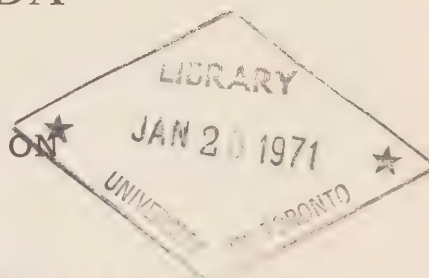
THURSDAY, DECEMBER 3, 1970

Complete Proceedings on Bill C-181,
intituled:

“An Act to provide temporary emergency powers for the preservation
of public order in Canada”

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)



THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hollett
Aseltine	Lang
Belisle	Langlois
Burchill	Macdonald (<i>Cape</i>
Choquette	<i>Breton</i>)
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McGrand
Croll	Méthot
Eudes	Petten
Everett	Prowse
Fergusson	Roebuck
*Flynn	Smith
Gouin	Urquhart
Grosart	Walker
Haig	White
Hayden	Willis

*Ex officio member

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 2, 1970:

With leave of the Senate,

The Order of the Day to resume the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Smith, for the second reading of the Bill C-181, intituled: "An Act to provide temporary emergency powers for the preservation of public order in Canada", was brought forward.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Smith, for the second reading of the Bill C-181, intituled: "An Act to provide temporary emergency powers for the preservation of public order in Canada".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, December 3, 1970
(5)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Urquhart (*Deputy Chairman*), Bélisle, Burchill, Connolly (*Ottawa West*), Cook, Eudes, Everett, Fergusson, Flynn, Gouin, Hollett, Lang, Langlois, Martin, Macdonald (*Cape Breton*), McGrand, Méthot, Prowse and Smith. (19)

The following Senators, not members of the Committee, were also present: The Honourable Senators: Boucher, Bourget, Cameron, Casgrain, Hays, Lafond, Laird, McEIman, McLean, Macnaughton, Molson, Phillips (*Prince*).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill C-181, intituled: "An Act to provide temporary emergency powers for the provision of public order in Canada".

The following witnesses representing the Department of Justice, were heard in explanation of the Bill:

Mr. John N. Turner, P.C., M.P., Minister of Justice and Attorney General of Canada;
Mr. D. H. Christie, Assistant Deputy Attorney General of Canada.

The following was present but was not heard:

Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice.

The Honourable Senator Flynn moved that the said Bill be amended as follows:

1. *Page 5, Clause 8:* Strike out the words "is, in the absence of evidence to the contrary, proof that he is a member of the unlawful association" and substitute therefor the following:

"is, in the absence of evidence contrary to that adduced, or to the effect that he never was a member, or that, if he was a member, he ceased to belong to the said unlawful association at a time prior to the sixteenth day of October, 1970, *prima facie* evidence that he is a member of the unlawful association."

The question being put, the Committee divided as follows:

Yeas—3 Nays—9

The Motion was declared passed in the negative.

The Honourable Senator Flynn moved that the said Bill be amended as follows:

1. *Page 9:* Clause 15 to be renumbered as Clause 16.
2. *Page 9:* The following to be inserted as Clause 15:

15. (1) The Governor in Council as soon as as possible after the coming into force of this Act shall appoint three persons to constitute a commission under the provisions of the *Inquiries Act*; one commissioner so appointed shall be a member of the Supreme Court of Canada, one shall be a member of the Superior Court of Quebec and be appointed upon the recommendation of the Lieutenant Governor in Council of the Province of Quebec, and the third member shall be appointed upon the recommendation of the other two members, and all members shall have a knowledge of both official languages.

(2) The Commissioners who shall be called "Public Order Act Administrators" shall inquire into, report upon and make recommendations with respect to the administration of this Act and of the *Public Order Regulations 1970* and shall report from time to time and at the same time to the Attorney General of Canada, the Attorney General of Quebec, and to the Parliament of Canada and the National Assembly of the Province of Quebec.

(3) The Public Order Act Administrators shall have all the powers of a Commissioner appointed under Parts I and III of the *Inquiries Act* and shall continue as Administrators for such period after the expiration of this Act, whether by effluxion of time or by proclamation, as the case may be, as is necessary for the carrying out of their duties under this Act."

The question being put, the Committee divided as follows:

Yeas—3 Nays—8

The Motion was declared passed in the negative.

It was Resolved to report the said Bill without amendment.

At 12:15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, December 3, 1970.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred the Bill C-181, intituled: "An Act to provide temporary emergency powers for the preservation of public order in Canada", has in obedience to the order of reference of December 2, 1970, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Earl W. Urquhart, Q.C.,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

[Text]

Thursday, December 3, 1970.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-181, to provide temporary emergency powers for the preservation of public order in Canada, met this day at 10 a.m. to give consideration to the bill.

Senator Earl W. Urquhart (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we are met this morning to discuss the Bill C-181. This bill has received wide publicity since its introduction in the House of Commons on November 2 last and I do not think it is necessary for me to give a general outline of the bill. It received second reading in the Senate yesterday, after a debate in which many senators participated. I think I can say that all honourable senators are in agreement with the principle of the bill: that is what I gathered from the debate on Tuesday night and yesterday.

There is one provision of the bill that is causing concern among honourable senators and that is clause 8. This provision has been called an evidentiary provision, others have called it the *prima facie* presumption of membership, and others have called it retroactive legislation. It is really the so-called retroactive aspect that has engendered the most debate on this clause.

Honourable senators, we have the Minister of Justice and Attorney General of Canada, the Honourable John Turner, present this morning. I should like the minister to address himself to clause 8 of the bill and the points which I have raised. Mr. Turner.

Honourable John N. Turner, Minister of Justice and Attorney General of Canada: Mr. Chairman and honourable senators, I wonder whether, before dealing with clause 8, I might say a few words. I am very pleased to be again before the Senate committee, as I have been on a number of occasions. I am delighted, Mr. Chairman, that the committee is being presided over by you. I recall with affection some of the other occasions I was here when Senator Phillips was helping me to pilot rather controversial legislation through the Red Chamber.

In the House of Commons we had strenuous, vigorous debate on this measure, the Public Order (Temporary Measures) Act—and that is how it should have been. I had the opportunity of glancing at the record of debate in the Senate. I note you also have had a vigorous debate—and that is how it should be.

This bill deals with those delicate issues that balance individual liberties against the security of the state. It is always a question of judgment as to how that balance should be adjusted, particularly in times of emergency, in times of stress and in times such as those in which we found ourselves six weeks or so ago and in which we still find ourselves, at a time when society is dealing with conspiratorial group violence, something unprecedented in the history of our country.

It was because of the drastic conditions that were present in parts of our country that we had to respond with drastic action, to begin with the War Measures Act, followed by the introduction into Parliament of this bill.

The purpose of the legislation now before your committee, Mr. Chairman, is to provide a more specific tool on a short-term basis to deal with the FLQ conspiracy, based in Quebec but not necessarily limited to Quebec.

The Prime Minister and I both said, when we were debating in the House of Commons, that the War Measures Act was the only piece of legislation we had available at the time for the immediate response to the crisis. It had the advantage of meeting the requirement of urgency, of surprise, and gave us the necessary flexibility in terms of a regulation making power that we needed, because we had not really determined the full contour or range of the perimeters of the situation with which we were dealing. It also gave us the flexibility at that time for dealing with the province of Quebec so that there could be a joint response to the problem.

But the bill extends the powers of investigation and the powers of apprehension of the law enforcement authorities. It extends the power of arrest, the power of detention without a charge being laid, the power of search without warrant and the suspension of bail at the instance of a provincial attorney general. Apart from the creation of new offices, those are the only departures from the ordinary criminal law of this country. In every other respect the criminal law operates as the Criminal Code says it shall operate.

The right to counsel is maintained; the right to trial by a judge and jury; all the rules of evidence that protect an accused; the overriding burden of proof being on the state or the Crown to prove guilt beyond any reasonable doubt; all the protections given to an accused and the procedural limitations put upon the Crown apply, except as I have said.

As a matter of fact, the bill makes it quite specific that the Canadian Bill of Rights does apply, except in so far as it is modified by the power of detention and the suspension of bail.

We felt it important to replace the War Measures Act as soon as we could. We gave a commitment to the House of Commons during the debate on the proclamation of the War Measures Act—the debate that lasted October 16 and 17—that we would bring in a bill to replace the proclamation within a month. We brought that bill in within two weeks, on November 4.

We were concerned about the potential power of the War Measures Act—a power that went well beyond the regulations that are now in force. Honourable senators should recall that the only statutory instrument now in force is the regulations published pursuant to the War Measures Act. The War Measures Act is a piece of potential legislation that is only implemented by regulations made by Order in Council and only the regulations have the force of law.

This bill is to replace the regulations and will automatically revoke the proclamation of the War Measures Act. But it ought to be clear that it is not the full measure of the War Measures Act that is actively in force having the force of law. There is no power to deport. There is no power to expropriate without due process. There is no power to seize in federal hands the ports of the country and so on. So that the potential power of the War Measures Act was not exercised, but that potential power still remains in effect. And it is because we want to withdraw that potential power that we want to revoke the proclamation. In the words that I used that the Canadian press seemed to like, it is because we want to “dormatize”, put to sleep again, the War Measures Act and withdraw that tremendous potential power that we have introduced this specific piece of legislation. So the only legal weapon in force after the passage of this legislation will be this bill, if the Senate decides to approve it.

Bill C-181 is a de-escalation from the War Measures Act. It replaces the regulations now in force and it reduces the severity of those regulations. It is made specific in this bill that the bill is to apply to the FLQ or successor organizations or any other organization having substantially the same purpose and using substantially the same means to overthrow the government of Quebec or to affect the relationship of Quebec to the rest of Canada by crime or by violence. In other words, it is made quite clear that this bill cannot be abused by any provincial attorney general to meet other types of conspiratorial violence elsewhere in Canada. We wanted to be precise about that, because there could have been a temptation under the current regulations for provincial attorneys general to go beyond the scope of those regulations. It is made clear in this bill.

Secondly, the definition of the FLQ is rendered more precise. The purpose must be to overthrow government by violent means. It does not relate to an attempt to change the governmental structure in this country by persuasion or by the ballot box.

The bill shortens the period of detention before a charge from seven and 21 days as contained in the regulations to three and seven days as contained in the bill. It curtails the presumption of proof in section 8, that you mentioned, Mr. Chairman, and reduces that considerably

from the regulations. It includes, specifically, the provisions of the Canadian Bill of Rights. Although I think that that is implicit in the current regulation under the War Measures Act, we have explicitly added that here.

The Government has been accused by some of its critics of adopting a rigid, uncompromising attitude in the House of Commons. I want to say that the bill is a de-escalation—quite a marked de-escalation from the War Measures Act, and we did bring it in at the earliest opportunity. Moreover, we did agree with the Leader of the Opposition (Hon. Mr. Stanfield) in respect of a Part II of the bill that we had originally contemplated and had discussed—dealing with a permanent piece of legislation that would be available to Government in the area of peacetime violence of a conspiratorial nature in the future—that that type of legislation ought to receive more review. We agreed that it ought to receive more review by Government and more review by Parliament before this Government took that position. We did that because the Leader of the Opposition assured us that, had we not, there would have been protracted debate in the House of Commons, whereas, if we abandoned that idea of the moment, he would expedite passage of this Bill in the House of Commons.

But there is no doubt about it that we in this country are going to have to consider what type of legislation we should have, if any, to deal with conspiratorial group violence in this country in the future. The Criminal Code is based on the assumption that crime is an individual matter. There are certain provisions in the Code relating to conspiracy, but, generally speaking, the conspiracy deals with a group of persons who happen to be linked to an individual crime. We are now dealing with a new phenomenon. We are dealing with group violence politically motivated, having seditious purposes. And the Criminal Code is not written primarily to deal with group crime. It is written to deal with individual crime or groups of individuals who happen to be linked from time to time in conspiracy.

That type of legislation will have to be considered by Parliament. I suggested at the time that we might want to send a term of reference to the Standing Committee on Justice and Legal Affairs in the House of Commons to discuss what type of legislation, if any, we should have and how to balance individual rights on the one hand with the rights of the collectivity on the other.

There are certain dangers to it. There are questions that will have to be decided. What should bring such type of legislation into force? Should it be permanent legislation or only legislation available to a Government by way of proclamation? What level of danger should be required? Should it be left in the hands of a provincial attorney general or should the federal Attorney General assume more control? What additional types of power should be given? Should it include additional powers of arrest, detention, suspension of bail, the power to deal with assemblies, parades and so on? These are matters which I believe Parliament as a whole is going to have to consider.

There is always a possibility that if there is a type of legislation on the books that is less severe than the War Measures Act the temptation of the Government to bring

it into force might be greater. To my mind that would not necessarily be a step forward.

In the House of Commons the Government analysed every amendment that was proposed. Those of you who have had an opportunity to read *Hansard* of the House of Commons will know that I did my best to respond to those amendments and gave reasons why we could not accept most of them. But we did accept an amendment proposed by Mr. Woolliams of the Conservative Party and Mr. Lewis of the New Democratic Party clarifying the drafting of clause 3.

But I had the responsibility of ensuring that if the law was going to be a tough law, and it is a tough law for a specific purpose and for a short term, and is not part of the permanent criminal law of this country, that that law had to work. I tried to indicate to the House of Commons that this bill really only changes the law in certain specific areas, the power of detention, suspension of bail at the instance of a provincial Attorney General, extended powers of arrest, certain presumptions of evidence, to be found in clause 8, and provided for administration by provincial Attorneys General.

This type of bill, Mr. Chairman, in ordinary times would, as I have said before, have been unpalatable to me and unpalatable to the Prime Minister. It is philosophically contrary to what the Prime Minister stands for, and is philosophically contrary to what I believe in. It is contrary to the type of legislation I have tried to introduce into this Parliament since I became Minister of Justice. However, we are not dealing with an ordinary situation and we are not living in ordinary times. The bill represents a value judgment between individual rights, on the one hand, and the rights of the state on the other. Whether we made the right judgment, I suppose only history will say. But we did what we did because we felt it had to be done.

I hope that this thrust under this Government of enhancing the rights of the individual will continue, and I want to assure this committee and the Senate that I intend to continue with our program of legal reform, to widen the personal options available to Canadians and also to open new avenues and remedies of appeal and recourse for the average citizen against his government.

Now I need not say that the Prime Minister and I realize that this is not the ultimate solution to the problems of Quebec and Canada, but you cannot solve these problems by legal responses. You try to preserve freedom under the law, and without law there is no freedom. Obviously the social and economic infrastructure, the lack of which has allowed violent conspiracy to flourish, has to be restored. Similarly the climate of frustration on which violence feeds has to be changed. No one wants this country to return to normal faster than I do.

Now, Mr. Chairman, if you want me to deal with clause 8 before we proceed to questions, I am prepared to do that.

The Deputy Chairman: That seems to be the crux of the bill and seems to have provoked the most controversy—clauses 4 and 8.

Senator Flynn: Mr. Chairman, I think there is a problem of procedure which I think we should settle now. I was wondering whether it would be a good solution to question the Minister on problems of general application, not related necessarily to the bill itself first, and then we could proceed to question the Minister on each clause of the bill. This would make for a more positive way of questioning the Minister and dealing with the bill.

The Deputy Chairman: Are those your wishes, honourable senators?

All right, Mr. Minister.

Senator Flynn: I have a question of a general nature which is not really related to a particular clause of the bill. It was touched on by the Minister and relates to permanent legislation which he says is contemplated to deal with problems of the same nature as the one posed by the FLQ. The Minister mentioned that in the original bill, Part II, I think was intended to deal with this to some extent. He has indicated some of the problems that have been considered. Now I want to ask him whether in this Part II or in the thinking of the Government there is any idea of amending the Criminal Code to enlarge the definition of sedition or conspiracy to include certain types of acts of the FLQ that are not necessarily destined to overthrow the Government, but sometimes only to blackmail the Government into doing something. I am speaking of the association, of course; I am not speaking of somebody committing a crime which is already provided for in the Code. I am speaking of an association which would not necessarily try to overthrow the Government but which would by way of violence try to intimidate the Government and intimidate Parliament into taking administrative or legislative action.

Hon. Mr. Turner: May I respond to that, Mr. Chairman? Before doing so, may I apologize to my colleagues who are with me for not introducing them. On my right is Mr. D. H. Christie who is well known to you and who is Assistant Deputy Attorney General, Department of Justice, and then next to him is Mr. J. A. S. Scollin, head of the Criminal Section of the Department of Justice. As I say, they are both well known to you, and I am grateful to have them here with me.

In response to Senator Flynn's remarks, let me point out that we are not yet committed to any legislation at all. We do not know whether legislation is the proper response, nor do we know what type of legislation would be necessary. To my mind there is need for greater consultation with people right across Canada and perhaps for holding some public hearings before we make up our minds. I do not contemplate a permanent amendment to the Criminal Code. Any type of legislation that might be available for emergency situations should be short-term legislation brought into effect by way of proclamation for a limited period of time to take care of a specific problem and should then be self-ending or self-terminating.

I think the main difficulty is to describe what those situations are that would trigger the proclamation or who can request the action—should it be the mayor of a great city, the Attorney General of a province or should it be the federal Attorney General? What review should there

be? What disclosure to Parliament should there be? What availability for debate in Parliament should there be? What additional powers should be given? What options should be given to the various areas of government?

I suppose the definition of sedition, and there is such a definition, and a definition of intimidating Parliament, the definition of kidnapping, the definition of violent crimes in the Criminal Code itself might be sufficient. But what this bill does and what the regulations did is to increase the procedural rights of the Crown, increase the evidential and investigatory possibilities of the Crown, without which the evidence could not be obtained to lay charges of sedition, of murder, of kidnapping or conspiracy. And it is because under the ordinary Criminal Code the period of detention before charge is 24 hours, and properly so in ordinary times, because the question of bail is properly left in the hands of the judiciary and because it is impossible to give the judiciary all the information necessary to combat some types of seditious conspiracy as in the atmosphere we are now living in, that we have not changed the substance of the law. We have changed the evidentiary possibilities available to the Crown for a short-term period of time. One might argue that the substance of the Criminal Code is sufficient, but the evidentiary possibilities available under the Criminal Code to the Crown were not sufficient for this particular problem.

Senator Connolly (Ottawa West): Will not the minister agree that this legislation does, in fact, change to a certain extent, in the way he has described in his opening, the substantive criminal law, and has it not created a new offence?

Hon. Mr. Turner: It creates a new offence, that of an unlawful association. The reason that new offence is created is not only to clarify the conspiratorial nature of the FLQ—because I suppose one could argue that the FLQ was an unlawful association even before this legislation was introduced or the regulations were passed, because from what we know of the FLQ it makes it a violent, seditious conspiracy within the definition of the Code, which I will deal with when we talk about retroactivity, because one could argue that the FLQ was always outlawed and unlawful within the definition of “sedition.” But the reason that the offence of being a member of the FLQ or a successor organization is in the bill is to limit and restrain the extended powers of detention and arrest, detention without bail and search without warrant, to this situation. We had to have something upon which to hang these extended procedural rights. And if we had not had the specific offence in the bill there would have been nothing in the bill to pinpoint the purpose of the extended procedural rights given to the Crown. That, primarily, is the reason for the definition of FLQ in this bill.

Some charges are being laid under the War Measures regulations, but I know that the Attorney General of Quebec and the prosecutors who are advising him, the team of prosecutors he has appointed, are attempting, where possible, to lay charges under the Criminal Code, on the basis of evidence they are able to obtain under these regulations.

Senator Flynn: I appreciate the problem of strengthening the arm of the police in given circumstances and depriving individuals of certain rights because of very serious circumstances, but my question was really whether it was the intention to define in the Criminal Code, eventually, what is an unlawful association, even if it is an association that has not as its purpose the overthrow of the Government and is using methods to blackmail the Government or Parliament, something along the lines of sections 2, 3 and 4 here, but that would apply generally throughout Canada.

Does the minister suggest this problem is already covered by being a member of an association which would use violence or blackmail the Government into making a decision or doing anything legislative or otherwise? Does the minister suggest it is already covered by the Criminal Code, being only a member? I am not saying participating in.

Hon. Mr. Turner: Being only a member of an unlawful association, as such, is not covered under the Code.

Senator Flynn: That is why I was asking whether it was intended to make an offence of it.

Hon. Mr. Turner: But there are the conspiracy sections in the Code. There is section 51 of the Code, “Intimidating Parliament or legislature.”:

Every one who does an act of violence in order to intimidate the Parliament of Canada or the legislature of a province is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Senator Flynn: But not merely being a member of an association which would do that?

Hon. Mr. Turner: Only if it is a conspiracy. All the options are open, senator, so far as I am concerned, as to what we have to do on a permanent basis to meet this type of situation in the future. We are going to need a good deal of sociological research, some criminological and penological research, and a rather sensitive understanding of what type of society we are going to be living in in the next 10 or 15 years.

Senator Bélisle: Mr. Minister, did I understand you aright a while ago, that you said this legislation is mostly to stop the FLQ overthrowing the Quebec government by violent means? In other words, this legislation could also apply to the communist Mao party?

Hon. Mr. Turner: No, sir.

Senator Bélisle: Not if they were to attempt to overthrow the government by violent means?

Hon. Mr. Turner: The purpose of the legislation is set forth, as best we could draft it—and it was an incredibly difficult drafting problem, I want to assure you—in section 3.

Senator Flynn: The preamble too was difficult.

Hon. Mr. Turner: The preamble too was difficult, senator.

First of all, the legislation is to reach *Le Front de Libération du Québec*:

...or any group of persons or association that advocates the use of force or the commission of crime as a means of or as an aid in accomplishing the same or substantially the same governmental change within Canada with respect to the Province of Quebec or its relationship to Canada as that advocated by the said *Le Front de Libération du Québec*,

Senator Bélisle: Do you say that the Mao communist party would not qualify as any other organization?

Hon. Mr. Turner: If there were a violent conspiracy having the same purposes as the FLQ, as set forth in this bill—namely, the overthrow by violence or the use of crime of the Government of Quebec, or the Government of Quebec in its relationship to Canada—then that would be covered. But if it were a Maoist organization in Vancouver, having no relationship to the FLQ, it would not be covered.

Senator Prowse: You would separately consider that seriously?

Hon. Mr. Turner: That is conceivable.

Senator Prowse: That is another situation?

Hon. Mr. Turner: Yes.

Senator Prowse: That is the point you are making?

Hon. Mr. Turner: Yes, precisely, senator.

Senator McElman: The minister, in his general remarks looking to more permanent legislation, suggested perhaps a reference might be made to the appropriate committee of the Commons. Would he look kindly upon a reference to a joint committee of the two Houses of Parliament?

Hon. Mr. Turner: I never exclude that possibility, Senator McElman.

Senator McElman: Or two separate committees operating co incidentally?

Hon. Mr. Turner: Whatever had to be done, I would venture to say that we would not want to duplicate the work.

Senator Cook: We are a very fine group up here.

Hon. Mr. Turner: Well, I am looking forward to the reports of a number of committees of the Senate.

Senator Prowse: You would just as soon it be examined by one committee as two?

Hon. Mr. Turner: No, I always find that we are very well treated up here too, senator.

Senator Prowse: But if it were one it would save time?

Hon. Mr. Turner: Not necessarily, but I think we have to co-ordinate our efforts within the Parliament of Canada, and it is a job for Parliament.

Senator Flynn: In connection with the preamble which I was referring to, paragraph 3:

AND WHEREAS the Parliament of Canada, following approval by the House of Commons of Canada...

—of course, the Senate was not called upon to pass upon a formal resolution to approve the decision explicitly, unanimously. I would have hoped the omission of the Senate would not be there. However, this is not my point.

...by the House of Commons of Canada of the measures taken by His Excellency the Governor General in Council pursuant to the *War Measures Act* to deal with the state of apprehended insurrection in the Province of Quebec...

I understand that when the *War Measures Act* was proclaimed the Government was under the impression that there existed a state of apprehended insurrection. At the time this legislation was introduced, or at this time now, is it still the view of the Government that we are faced with a state of apprehended insurrection? I doubt that these words really describe the situation. I wonder if they are not going too far. It is such a very bad situation, but I question describing it as "a state of apprehended insurrection." If we are dealing with only a few people who operate in isolated, separate cells, could you describe them as being able to create an insurrection in the Province of Quebec?

Hon. Mr. Turner: Let me deal with that preliminary point first because I want to assure honourable senators that there was no attempt by the Government to ignore the privileges of the Senate. Under the terms of the *War Measures Act* it was not necessary for the Government to come to Parliament at all, but we felt that in the circumstances we should place the regulations before the House of Commons. There was no contempt of the Senate because the *War Measures Act* itself does not provide for any approval by Parliament of the proclamation, although ten members of Parliament can challenge it. So, there was no attempt to infringe on the privileges of this honourable house. I want to assure you of that.

The preamble merely says that at the time the proclamation was issued in the early morning of October 16 there was a state of apprehended insurrection. This bill stands on its own feet. The preamble merely states that it is the feeling of the Government that this bill is necessary to deal with a continuing threat of grave violence represented by the FLQ. So, it is really irrelevant to our discussion as to whether a state of insurrection still exists. It would not have to exist, so I am not going to comment on that.

Senator Hays: Mr. Chairman, I should like to ask a question of the minister. It has taken a long time for the FLQ to get up the nerve to do the things they are doing, and it is just not going to disappear by April 30. If at that date you want to extend the provisions of the present bill then what is the mechanism by which this is done.

Hon. Mr. Turner: Through you, Mr. Chairman, I would say to Senator Hays that that is set forth in section 15.

Section 15 provides that this bill expires on April 30. If the Government were to feel that the threat had been successfully met before April 30 then the Government by proclamation and without recourse to Parliament could terminate the bill earlier than April 30. If, on the other hand, the Government felt the conditions prompting the introduction of this bill were still apparent and in existence as of April 30 then the Government could prior to April 30 move to extend the application of this bill by seeking a joint resolution from both houses of Parliament.

Senator Hays: But suppose that that was debated for three weeks. If something happened would it then be necessary to reintroduce the War Measures Act?

Hon. Mr. Turner: I am advised that that resolution would have to be passed first. In other words, if the resolution was not passed by Parliament by April 30 then this bill would lapse.

Senator Hays: My question is: If there is a debate which lasts for three or four weeks and in the meantime it is obvious that the Province of Quebec and the City of Montreal are still not out of trouble, would you have to reintroduce regulations under the War Measures Act?

Hon. Mr. Turner: Senator, you know, I try to avoid hypothetical questions in the House of Commons, and I think I ought to follow the same procedure here. We shall have to meet that fence when we come to it.

Senator McElman: How many extensions are possible?

Hon. Mr. Turner: One.

Senator Flynn: We received the same answer from the Leader of the Government in the Senate.

Hon. Mr. Turner: I have always accepted the wise counsel of the Leader of the Government in the Senate.

Senator Everett: Mr. Minister, I refer you to section 7(2), which states:

No person shall be detained in custody pursuant to subsection (1)

(a) after seven days from the later of the time when he was arrested or the coming into force of this Act, unless before the expiry of those seven days the Attorney General of the province in which the person is in custody has filed with the clerk of the superior court of criminal jurisdiction in the province a certificate under this section stating that just cause exists for the detention of that person pending his trial...

Is there ever a review of that just cause?

Hon. Mr. Turner: Through you, Mr. Chairman, I will say to Senator Everett that there is no review of the discretion of the Attorney General and his filing of the certificate. The Attorney General in his certificate would state that there is just cause for suspending bail, and no one can look behind that certificate. He is responsible for the administration of justice to the legislature and to the people of the province in which he operates.

Senator Prowse: That is a fairly standard principle of law, is it not? Even appeal courts ordinarily will not step in to interfere with the discretionary...

Hon. Mr. Turner: I think the whole matter of discretionary justice is something that some day Parliament is going to have to look into. There are many discretionary decisions made by the law enforcement authorities under the Anglo-American system of jurisprudence. For instance, there is the decision of whether to arrest or not to arrest; whether to prosecute or not to prosecute; whether to oppose bail or not to oppose bail; whether to lay a charge, and if so what charge; and whether to accept a plea. All of these are discretionary matters that ordinarily are not reviewable by the courts, and which depend on the good faith of the law enforcement authorities right up to the attorney general of the province or the Attorney General of Canada. The only control on that is Parliament, the legislature, and the people.

As I said in the House of Commons, review mechanisms that are not responsible in an equal way to the people perhaps are not as effective as some people would like to believe.

If an arrest is improperly made under this bill there is still the possibility of damages for false arrest. There is no doubt about that.

Senator Connolly (Ottawa West): Or an application for one of the prerogative writs?

Hon. Mr. Turner: Or *habeas corpus*, yes. *Habeas corpus* is available. In this particular instance, because of the extraordinary circumstances, the Attorney General of Quebec, I am sure, will be reviewing the individual bail applications under the War Measures regulations, and indeed under this legislation. All the arrests to date, of course, have been made under the regulations. The Attorney General of Quebec has already stated that his three-man committee under the chairmanship of Jacques Hébert have free access to all those held and, indeed, all those released, under the War Measures regulations. That was confirmed to me by Mr. Hébert personally. Mr. Hébert tells me that in the instance of any complaint that is made to his committee he refers it to the *protecteur du peuple*, the Quebec ombudsman, who has power under the statute. The ombudsman, I am told by the Attorney General of Quebec, also has access to anybody held or anybody released. It will be open to the ombudsman, the Attorney General of Quebec tells me, to suggest in individual cases what compensation ought to be made or what remedy ought to be given to those who may have been unjustly held under the War Measures regulations, and presumably under this bill if it is passed by Parliament.

Senator Everett: Is there any comparable situation in Canada in which a person can be detained without eventual review of the reasons for his detention?

Hon. Mr. Turner: There is eventual review by a court. A charge has to be laid within seven days, and trial has to be brought on after 90 days, so there is a review.

Senator Everett: But there is not a review of that one specific point, so far as I can tell. That detention just continues.

Hon. Mr. Turner: There is no way under the bill by which the discretion of the attorney general is reviewable.

Senator Everett: Is there any comparable situation in Canadian criminal law?

Hon. Mr. Turner: Not now.

Senator Everett: Would there be any reason for giving consideration to the filing after the expiry of this act of the reasons for the exercise of that discretion?

I am not saying to hobble the Attorney General.

Hon. Mr. Turner: The difficulty here is that the whole panoply of facts that go into the assessment of the judgment that must be exercised by a chief law enforcement officer of a province just cannot be codified.

Senator Everett: I am not suggesting, Mr. Minister, any action that would hobble the Attorney General in issuing the certificate. However, I wonder whether there would be any reason at a time after the expiry of the act for causing the Attorney General to file in those cases where he has issued the certificate the reasons that gave rise to the just cause?

Perhaps there is none; if that is so I would be prepared to let it drop. It is just a suggestion.

Hon. Mr. Turner: I cannot see the purpose of it in the present instance because, as I say, the ombudsman now has the ability to review any situation in which he feels injustice might have been done.

Senator Prowse: There are two things; you have the committee and the ombudsman.

Senator Phillips: My first question deals with a member of the Canadian forces being a police officer. I am particularly interested in this in view of what is taking place in Montreal at the present time. If a member of the armed forces is fired upon, is he authorized to return the fire?

Hon. Mr. Turner: Senator Phillips, there is nothing dealing with that in the bill. It would depend on what military command that soldier had received in the particular situation.

Senator Phillips: Yes, I realize it is not in the bill. I wonder if there have been any instructions issued in that regard?

Hon. Mr. Turner: I have difficulty enough without responding for the Minister of National Defence.

Senator Phillips: But he is being used not as a member of the armed forces, but as a police officer.

Hon. Mr. Turner: Under section 225 of the National Defence Act it is true that they have the power of a police officer. However, they do not cease to be responsible and responsive to military command.

Senator Phillips: My second question is to ask for a definition of meeting of the FLQ; what constitutes a meeting? Must there be a chairman and an agenda?

Hon. Mr. Turner: That is a question of fact that will have to be decided by a court. I suppose they would look to the dictionary definition of a meeting.

Senator Cameron: I know the matter of review is probably the most sensitive area of this whole program and you have answered part of it. I know that the Prime Minister has taken a very definite stand against any overall review board being established.

However, there is a growing uneasiness in the country with regard to the treatment of prisoners held under this act. What assurance can you give that this matter will be fully investigated?

Hon. Mr. Turner: Mr. Hebert told me on Monday that to his knowledge out of the 450 arrests, and particularly the 350 that were made in the first few days, where the problem was with that number of arrests there were problems, administrative overlap and so on, there had only been five or six cases brought to the attention of his committee, which has complete access, of rough treatment by the police. There were also five or six instances of what he called prolonged interrogation.

He has those matters in hand. On the basis of what he told me that is the limit of the maltreatment.

Senator Cameron: But along with this we think of the beating up of an officer of the Province of British Columbia some time ago, which suggests that there is a need for greater disciplinary action being taken with respect to the police.

I have heard a good deal of concern regarding the protection available to see that this does not happen.

Hon. Mr. Turner: I do not want to talk about the particular case, because that is before the courts and will presumably be dealt with by the Superior Court in Montreal.

However, what is the protection of the citizen? The protection of the citizen, first of all, has to be the good judgment and conscientious enforcement of the law, under law, by the police authorities.

Secondly, proper supervision under the Police Act so that in the case of abuse of police power disciplinary action is taken.

Thirdly, constant and immediate review by the chief law officer of the Crown within the province, the Attorney General, of police methods and the Police Act.

Fourthly, availability under law for civil redress for those who have been badly treated by the police.

However, the first reason is always going to be the conclusive one. The criminal law has to be based on an assumption that the men and women who enforce it do so to the best of their ability, as humanely and compassionately as they can, but fulfilling the oath which they take.

Now, largely this depends, of course, on the kinds of laws we in Parliament ask the police to enforce under the Criminal Code and under the criminal law and the type

of procedures we impose on them. I think we owe it to the police forces of this country, first of all to give them public support in doing what they have to do; secondly, to ensure that the police are asked only to enforce credible, common sense laws in a credible, common sense fashion.

I am not referring to this law, but I think that some of the laws we ask the police to enforce and some of the ways in which we ask them to enforce them, sometimes put the police in a non-credible position in current terms. That is the reason for the arrest and bail reform bill which will again be before Parliament.

We talk about review procedures and so on. The office of the Attorney General dates back to 1232 and leaves in a man responsibility to a legislature or Parliament. He is therefore reachable by the people for the general tone of his administration.

An Attorney General under the British parliamentary system must decide whether or not to institute proceedings and whether or not to administer certain aspects of those proceedings on the best judgment of the public interest, free of political considerations. In fact, Attorneys General have been dismissed by Parliament for failure to keep that in mind and can be dismissed by a vote of confidence by Parliament in this country or the legislature of any province by his failure to separate partisan considerations from the public interest as he sees them. He is not required under British parliamentary tradition to abide by cabinet decision on whether to institute or not institute prosecutions. Indeed, that can be a reason for a want of confidence by the parliament or the legislature if he does find himself so bound, and he should refuse to have himself so bound. He can consult his colleagues on an informal basis, but in the end it is his decision and he is responsible for that to the people. It is one of the reasons that I have not agreed yet to allow an attorney general to be appointed in the Yukon or the Northwest Territories, because until they have a fully responsible government where the chief prosecution officer is directly responsible to the people I do not believe that the attorney generalship should reside there, so I take responsibility, because I am reachable by the people.

Senator Cameron: I fully support the Government's use of the War Measures Act and this bill, but if there is any way of strengthening the people's confidence that justice will be done completely once a person is within the toils of the law, it would go a long way towards alleviating a certain uneasiness about treatment by the Quebec police.

Senator Cook: On the question of treatment, am I correct in thinking that if the right to counsel is retained, and if the right to *habeas corpus* is retained, the question of possible ill-treatment would be subject to review by the courts? With the right to counsel and *habeas corpus*, could not the question of ill-treatment come before the courts and be reviewed by judicial authority?

Hon. Mr. Turner: Yes, if anyone detained can prove that he has cause of action he can obtain legal redress.

Senator Cook: And the courts could intervene to stop the ill-treatment?

Hon. Mr. Turner: Sure.

Senator Connolly (Ottawa West): There is one problem that perhaps the minister will comment on. In a federal state like ours, we have in fact eleven attorneys general, but in our constitution we have given the administration of the law to the provinces. While we may pass a criminal law here and have jurisdiction to do so, it is the provincial attorney general who is ultimately answerable, and answerable to the people, for his administration of the criminal law that we might pass.

Hon. Mr. Turner: Under the present scheme of the Criminal Code, as you have said, senator, we in Parliament are responsible for the substance of that Code and the procedure within it. But the administration or the enforcement of the Code is left to the provincial attorney general under that Code. The same is true under the War Measures regulations; the same is true under this bill. That being so, when dealing in a federal state with an independent and equal level of government, it is up to the people to whom that level of government is responsible to ensure that the content of the criminal law is properly administered. I think I will leave it at that.

Senator Flynn: Under the War Measures Act the responsibility of enforcing the regulations could be left in the hands of the federal Government, as I think was done during the war.

Hon. Mr. Turner: Yes, it could.

Senator Flynn: You mean the present regulations?

Hon. Mr. Turner: That is right. Under the War Measures Act it is true that the federal attorney general could be left with enforcement, as he was during the war. Mind you, when we talk about wartime regulations that involved detention, there are a number of very important distinctions that I think I should make to this committee briefly. First of all, in wartime, under those regulations—and we are not looking at the act, we are looking at the regulations, because it is only the regulations that have the force of law—in wartime there was detention without any necessity of a charge being laid, whereas here a charge has to be laid within seven days; there was no necessity of a trial, whereas here a trial has to be held; there was no necessity for publicity, whereas this bill and the current regulations are administered in the open publicly, under public scrutiny. That situation in wartime should not be compared with these regulations.

Senator Flynn: I agree, but you could have done the same thing.

Hon. Mr. Turner: Theoretically.

Mr. Chairman, may I just add one more thing to Senator Connolly. There is also the practical problem of the way our police forces are structured in this country. The Royal Canadian Mounted Police have contracts with eight out of ten provinces to be responsible for law enforcement. There are exceptions in certain large

municipalities in some of those other eight provinces. Under the contracts the R.C.M.P. are responsible to the provincial attorneys general. In Quebec and Ontario there is no such contract; each of those provinces has its own provincial police forces; the role of the federal force in those provinces is accessory or supplementary only. If the federal attorney general is to assume in the future direct responsibility for enforcement of any particular measure in those provinces, then obviously the control of the necessary police to buttress that responsibility would have to be arranged. Under the current circumstances it is obvious that the bulk of the police force in Quebec is provincial and municipal.

Senator Molson: I should like to ask a question about clause 6. The key to that seems to be that any owner, lessee or agent who knowingly permits a meeting of the unlawful association in the building he controls is guilty of an offence. I am wondering why that could not have been enlarged to include the leasing, the renting, allowing the use of space in that building, such as might have applied perhaps in the apartment house where known members of the FLQ were hiding, and where, for example, I think Lortie was apprehended.

Hon. Mr. Turner: This bill is directed towards a specific association insofar as it relates to meetings, not to where people live. It is the holding of meetings towards which we are directing our attention. It is therefore not an offence to lease property to someone who may turn out to be a member of the FLQ, unless one knew that the property was going to be used for the purpose of a meeting. If it is just to be used for a husband and wife situation, a domicile, a foyer, there is nothing in this bill to catch that.

Senator Molson: I am asking why not.

Senator Flynn: Would it be covered by clause 5? If you give any assistance by allowing a person to use your apartment, that comes under clause 5.

Hon. Mr. Turner: That is correct.

Hon. Mr. Molson: I was not referring to a foyer. I was referring to an apartment that has an elastic cupboard in it, and that type of apartment which was leased to, I suppose, two or three people but actually contained, I think it was, seven.

Hon. Mr. Turner: I think clause 5 is elastic enough to catch that.

Senator Molson: Thank you. That answers my question.

Senator Phillips: As a layman in law I am a bit confused, because the minister previously told me that the court would have to decide what a meeting is, and yet he says the bill is directed towards meetings. I find it a bit confusing that we have to wait for the court to decide what a meeting is, and yet the bill is directed towards meetings, if I understood what you were saying correctly.

Hon. Mr. Turner: Clause 6 is directed towards meetings. The way our system works is that we may have the responsibility for drafting the law, you may have the

responsibility for passing the law, but thank God neither of us has the responsibility for interpreting the law. We have that for the independent courts. We try to anticipate situations in proper drafting, but the interpretation will have to be left to a court. In so far as the word "meeting" is concerned, that will depend on the facts of a particular situation before the court, and in a particular case, and the court will have to determine as a matter of law whether those facts constitute a meeting within the meaning of this bill. There is no way that we can render that more precise.

Senator Casgrain: What constitutes a meeting? The FLQ operates by cells and sometimes they do not know each other. They can hold little meetings. It is the term "meeting". What would it imply?

Hon. Mr. Turner: That is again a matter of evidence and a matter of fact in a particular case, Senator Casgrain, and common sense and common understanding of what a meeting is.

Senator Macnaughton: I understand a conspiracy requires at least two people, so surely a meeting would be somewhat similar.

Hon. Mr. Turner: You cannot meet with yourself; there would have to be at least two people.

Senator Hollett: Would not the word "knowingly" take care of that situation?

Hon. Mr. Turner: That does not help define "meeting". The word knowingly applies to two things: first of all, you have to know it is a meeting, and that it is a meeting of the FLQ.

Senator Hollett: That has to be proven.

Hon. Mr. Turner: That would have to be established.

Senator Prowse: Clause 6 also includes assembly, so you catch them one way or the other.

The Deputy Chairman: Honourable senators, we have had a general statement from the minister on this legislation. We have carried on a general discussion on a question and answer basis for the last while. Are we now ready to move on to a consideration of the clauses of the bill or a particular clause of the bill? What are your wishes?

Senator Flynn: We could proceed clause by clause, but I think we will reach clause 8 pretty quickly.

The Deputy Chairman: That was my contention in the beginning, that the most important clause in the bill is clause 8. Perhaps we can address ourselves to clause 8.

Senator Connolly: You might be better off to assure that clauses 1 through 7 are adopted and then move on to clause 8 and any others after that.

The Deputy Chairman: Honourable senators, are there any questions or debate on clause 1 of the bill?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 2?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 3?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 4?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 5?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 6?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 7?

Hon. Senators: Carried.

The Deputy Chairman: Are there any questions on clause 8 of the bill?

Senator Flynn: After the long debate yesterday I do not intend to repeat what I said. I think the Minister of Justice knows the position I have taken, and I would rather hear from him before saying anything else.

Hon. Mr. Turner: This is a treatment I do not usually receive in the House of Commons. The first point to be borne in mind with respect to section 8, which I believe is subject to some misunderstanding, is that section 8 does not create any offence. All it does is raise an evidentiary presumption. It raises an evidentiary presumption in respect to one offence only, namely, the offence in section 4 of the bill which reads:

A person who

(a) is or professes to be a member of the unlawful association,

though it is section 4(a) which establishes the offence and section 8 which establishes certain evidentiary presumptions relating to that one offence.

First of all, it is clear that a person cannot be properly charged or convicted of being a member of an unlawful association prior to October 16. In other words, the fact of being a member of the FLQ prior to October 16 is not an offence either under the regulations or under this bill. One has to establish that there is membership in the FLQ after October 16. Section 8 just permits some evidence to be used of facts prior to October 16 to establish a situation which may or may not exist after October 16. The reason I say October 16 is that that was the date of proclamation of the War Measures Act, and under the transitional provisions those offences are carried forward into this bill.

My first submission to the committee, Mr. Chairman, is that section 8 does not provide for any retroactive or

retrospective legislation. Retroactive legislation means that a person could be convicted in November 1970 or December 1970 on a charge specifically referring to conduct in October 1970, of being a member prior to October 16. That cannot be done. There is nothing retroactive in section 8. No one can be properly charged or convicted under the regulations or under this bill unless the charge specifically relates to conduct or membership after October 16, 1970.

Senator Prowse: At the time the charge is laid?

Hon. Mr. Turner: Let me continue.

Senator Everett: Could we have a clarification of the point Senator Prowse just raised? He made the statement, "at the time the charge is laid". It is my understanding that it is an offence to be a member at any time after October 16.

Hon. Mr. Turner: That is right.

Senator Prowse: The charges are all in the present tense and not "you were".

Mr. D. H. Christie, Assistant Deputy Attorney General, Department of Justice: It could be in the past, but it has to be in relation to a date after October 16.

Hon. Mr. Turner: The present begins with October 16. Now, what is the effect then of section 8? It establishes what are called in the criminal law rebuttable presumptions, presumptions of fact that can be rebutted by other evidence, but unless rebutted would tend to have evidentiary value. In other words, if the Crown adduces some evidence under either of the three headings, either that the accused at any time actively participated in or is present at a number of meetings—that means two or more meetings—or spoke publicly in advocacy of the unlawful association or communicated statements, or as a representative of the unlawful association, that would raise a rebuttable presumption. That is to say, in absence of evidence to the contrary, that would prove he was a member of the unlawful association. If the Crown brings forth this type of evidence what does the accused do? He is entitled either by way of cross-examination of the Crown's witnesses that established this evidence of his own testimony or by any witnesses he himself calls to say that these facts no longer apply.

The Deputy Chairman: Is a mere denial sufficient by the accused?

Hon. Mr. Turner: It could be, depending on the credibility of the accused. If the accused can by way of his own evidence or evidence of his own witnesses or by cross-examination of the witnesses of the Crown cast any doubt on a balance of probability then he will be acquitted. Why? Because, despite these rebuttable presumptions, the burden of proof beyond any reasonable doubt under the criminal law always remains on the Crown and if the accused is able to establish any doubt the Crown will be unable to discharge its fundamental burden of proof of guilt beyond reasonable doubt.

There is nothing new in the criminal law, in the concept of rebuttable presumptions, nothing new at all, of

placing the accused in criminal proceedings in the position where he has to adduce evidence in his own behalf, once the prosecution has established certain facts.

There is section 8 of the Narcotic Control Act, which provides that on the charge of being in possession of an illicit drug for the purpose of trafficking, the Crown need only prove beyond a reasonable doubt that the accused was in possession of a drug and then it is up to the accused to show that he was not in possession for the purpose of trafficking.

Take the Food and Drugs Act; the Customs Act, the unlawful possession of smuggled goods; the Excise Act, the unlawful possession of spirits. Why do we need these rebuttable presumptions, in law, and why do we need it here? Because there are certain offences where the possession of facts is peculiarly in the possession of the accused, where he knows the situation better than anyone else, and he had to be given a certain responsibility of discharging a limited burden of proof.

There is nothing per se objectionable in law on these rebuttable presumptions. It simply means that the Crown introduces certain facts, then the accused has a duty to cast some doubts on those facts. If he can cast some doubts on those facts, then the Crown will fail. Because the fundamental burden of proof, which is apart from this clause 8, the fundamental burden of proof in any case of criminal law, to establish guilt beyond reasonable doubt, would still apply. And it applies from the beginning to the end of the case, and it is not affected by these rebuttable presumptions.

The Ontario Court of Appeal has held unanimously, in the case of the *Queen v. Sharp* that the onus shifting provision similar to this, in the Opium and Narcotic Drug Act, does not violate the Bill of Rights, it does not deprive a person of the right to a fair hearing or deprive a person charged with an offence of the right to be presumed innocent until proved guilty. Why? Because the fundamental burden of proof beyond reasonable doubt is always on the Crown, despite these rebuttable presumptions. The same case points out that the shifted onus can be discharged by a balance of probability. What does balance of probability mean in law? A balance of the stories of the two sides and if there is a balance of probability established, or a reasonable doubt established, then the Crown will not be able to discharge its primary duty of establishing guilt beyond reasonable doubt.

The Supreme Court of the United States also held that similar statutory presumptions in the United States' law are not a denial of due process within the meaning of the American Constitution, providing there is a rational connection in common experience between the fact proved and the ultimate fact which is to be presumed.

I am not going to go through the other instances in the Criminal Code where there is an onus placed on the accused to adduce evidence. But I am going to recite some of them to you. Section 162, trespassing at night; section 221, criminal negligence in the operation of a motor vehicle; section 233, kidnapping; section 253, the proprietor of a newspaper being responsible for libel, in other words, the owner of a newspaper is presumed to know what his writers are writing; section 295, possession of housebreaking instruments, if you are found at

night outside my house with housebreaking tools you have to show why you have got those tools, otherwise it is presumed that you want to get into my house.

I also want to refer to the well recognized doctrine in law of proof of similar acts. If similar acts in the past establish a course of conduct, that is admissible, on past evidence, to prove a present situation. It always has been. Under that doctrine, evidence can be adduced against an accused to assist in establishing his guilt, even though the evidence relates to conduct on the part of the accused prior to the date of the offence charged in respect of which the accused has not been convicted or even charged.

I think we have to realize that, in the absence of a provision like that in clause 8, and having regard to the clandestine or secret conspiratorial nature of the FLQ and allied organizations, it would as a practical matter be impossible, apart from admissions on the part of an accused, to establish the commission of an offence under section 4(a). It would be absolutely impossible, because obviously this organization since October 16 has not been having public meetings. If we were not able to rely on some rebuttable evidence—that can be rebutted—to have some evidence on which to lay the charge, then as a practical matter it would be impossible to establish this offence at all.

I want to be fair with the committee here. In similar fact evidence, of course, the crime was always a crime throughout the range of similar facts. Here one could say, as someone said in this committee, I think, Mr. Chairman, that prior to October 16 the FLQ was not an unlawful association within the meaning of the regulations or within the meaning of the bill—except that all this bill does, in clause 3 and in clause 4, and all the regulations do under the War Measures Act, is to render in precise statutory form what is probably the case now, a fact—I would say is the case now—that the FLQ, on the basis of its communiqués, on the basis of its acts of terrorism, of kidnapping, of violence, of holding governments to blackmail, qualifies within the definition of sedition under the Criminal Code and is probably, and has always been, an unlawful association. So that is the final answer to retroactivity.

I could read that section on sedition into the record here, but I think we all know it.

Senator Flynn: Mr. Chairman, I want to make it clear that I am in complete agreement with everything the minister has said. I am not against clause 8 if it means and if it is interpreted in the way the minister has explained. My point is not there at all. I said yesterday in the House that some of the amendments that were moved in the other place which would have taken away from the Crown the possibility of proving the facts mentioned in clause 8, as having taken place prior to the date of October 16, 1970.

I have indicated that I thought it was not fair that we had to use that. But my problem may be only a problem of drafting. The minister knows, however, that even now in the press and elsewhere there are many people who have some doubts as to the way the bill is drafted, that

would make it retroactive in this sense, that where we say, "in the absence of evidence to the contrary", if evidence to the contrary means only evidence to the contrary of the facts described in paragraphs (a), (b), (c) of clause 8, then if I prove that someone in 1967 attended a meeting of the FLQ and if he cannot deny it, he is deemed—it is not only that he is deemed but the proof is that he is a member of the unlawful association today, after October 16. My point is that it would be so easy to make it clear that the "evidence to the contrary" may be evidence to the fact that prior to or on October 16, 1970 I dissociated myself from the FLQ, therefore that I was not a member of the FLQ from October 16, 1970 or at the time the charge is made against me.

That is the only point I am trying to make and that is why I moved—or, rather, I suggested yesterday that we could make it clear and we could dissipate doubts and we could reassure all those who have expressed fears—by making it clear that we authorize any accused to prove that, after the facts that are mentioned in paragraphs (a), (b), (c), he dissociated himself from the FLQ, if he did so before October 16, 1970. The wording I was suggesting was to replace the last paragraph beginning by "is" by the words "is in the absence of evidence to the contrary to that adduced or to the effect that he never or ever was a member or that if he was a member he ceased to belong to the said unlawful association at a time prior to the 16th day of October, 1970, prima facie evidence that he is a member of the unlawful association".

So I have been told that it means the same thing. Well, if it means the same thing, why resist it, because I am sure that, if we adopt the amendment, we will satisfy those who have doubts and will satisfy those who have fears.

Senator Lang suggested that the difficulty could be overcome even by putting the words "in the absence of evidence to the contrary" at the end so that it would read:

... proof that he is a member of the unlawful association, in the absence of evidence to the contrary.

That would be helpful as well. In any event, one way or the other I think we should do something to remove the doubts and fears.

Even if you are right legally, even if you have all the confidence in the world that the court is going to interpret the act as you have said it will, why not be absolutely sure that it will do that exactly? Because fears have been expressed, and I think it is our duty to dissipate those fears if we can do so by a very simple amendment such as the one I have proposed. If my amendment is not acceptable to the officials of the department, perhaps the one suggested by Senator Lang is.

What I want to make clear is that the rebuttal is not one which is restricted to proving the contrary of the facts that are recited in paragraphs (a), (b) and (c). That is all I want, and I am quite sure that that is all the Minister wants, too.

Hon. Mr. Turner: Senator, I received a copy of your amendment last night and we went over it again this

morning. I am convinced, and I hope I can convince you, on the basis of the advice I have received and on the reading of this section, that the section as it currently reads is perfectly clear and does what you want it to do. In other words, the words "in the absence of evidence to the contrary" not only relate to evidence contrary to paragraphs (a), (b) and (c) but also to evidence contrary to the fact that he is a member of the unlawful association. If a court were possessed of evidence that someone had relinquished membership in the terms that you put, or had never been a member, then, as a practical matter, surely no court would hold that the presumption would hold up.

Senator Flynn: I am not so sure about that.

Hon. Mr. Turner: Well, sir, I am sure.

Senator Flynn: You are sure, but others are not.

Hon. Mr. Turner: "In the absence of evidence to the contrary"—contrary either to the presumptions or to the membership in the unlawful association; I do not think it matters where you put that phrase; whether you put it, as Senator Lang says, at the bottom or at the end. "Evidence to the contrary"; we are talking about an offence of membership and the presumptions are to try to establish membership; and evidence to the contrary is either contrary to the presumptions or contrary to the fact of membership.

I do not think, as a practical matter, that we have a problem here.

Senator Flynn: You do not think so, but some people do. We would all be in agreement, if the act were amended as I suggest. There would be no controversy. There may be no controversy in the courts now, but there would be no controversy in the public, generally, if you accepted the amendment; because you have, implicitly, admitted that my amendment would not change the law. But at least it would clarify it for sure. If it is harmful, I am prepared to withdraw it. But if you say that it is not, I say why not accept the viewpoint of those who have some doubts and have unanimity as to the exact meaning and exact purport of this section?

Senator Prowse: With all respect, it seems to me that the amendment would restrict the rights of rebuttal that were available to an accused, because you would detail them out.

Senator Flynn: Why?

Senator Prowse: Because you would detail them out.

Senator Flynn: No. I said that "in the absence of evidence to the contrary" covers the point which is here. But I go further. I add "or to the effect that he never was a member or that, if he was a member, he ceased to be". That is clear. We add to what is already there to make it clear that somebody who already disassociated himself on October 16 or prior can prove it.

Hon. Mr. Turner: Let me bring up another point for you, Senator, if I may. It is one I just thought of. We are talking here about presumptions. Now, I have given it to you as the opinion of the department which I share—

sometimes I do not—I have given it to you as the opinion of the department, which I share, that if the words “in absence of evidence to the contrary” relate evidence to the contrary to the presumptions or relate it to evidence that he is a member of the unlawful association. But for the purpose of the presumption, suppose you were right, it is only in absence of the evidence to the contrary of those presumptions that you really need to defeat the presumptions. In other words, the section sets up three sets of facts for presumptions. If evidence to the contrary rebuts those presumptions then you are back where you started and section 8 does not mean anything, and you do not really need “evidence to the contrary” to apply to the words “member of the unlawful association”. Because if evidence to the contrary is sufficient to defeat the presumptions in (a), (b) and (c), the rest does not apply, and again it is up to the Crown to prove membership. So I do not think you need it for both reasons. I do not think you need it because I believe those words as they read apply both to membership and to the three paragraphs. But even if they only apply to the three paragraphs, that is all you need because that defeats the presumption in section 8.

Senator Flynn: No, that is not enough.

Hon. Mr. Turner: Well, yes, because then the Crown would have to prove membership by some other way. Do you follow me there?

Senator Flynn: I have read the provisions of the Criminal Code where presumptions are created, and in none of these sections of the Criminal Code do we use the language in exactly the same way as it is here. This is an entirely new method. As you said yourself, the proof of similar facts relates to facts with respect to crimes prior to the date of the charge. And there is no decision that I have been able to find that would deal with exactly the same wording as we have here. Again, I say that it is possible, and many people have expressed this fear, that I, if I am an accused, cannot get an acquittal if I have attended a meeting of the unlawful association, and I cannot deny this fact because contrary evidence would be limited to evidence contrary to the fact that I had attended that meeting. I am not going to perjure myself to be acquitted. I want to be able to say that I attended the meeting, yes, but that, subsequently, I ceased to be a member of the association. I want this to be clear and I think this is the intention of everybody. I do not see why, if some people have doubts, even if you have reasonable assurance that the courts would give the interpretation to these words that they give to other words in other sections of the Criminal Code, I do not see why you would not accept making it clear that the point that the accused wants to make can be made.

Senator Everett: Mr. Chairman, I hope I am not misquoting Senator Flynn, but I gather you will be satisfied with Senator Lang's suggestion of putting the words “in the absence of evidence to the contrary” to the end of the section.

Senator Flynn: I think that would be an improvement.

Senator Everett: I wonder if the Minister has any objections to the resolution of the problem on that basis.

Senator Connolly: May I ask a supplementary question? Suppose that were done, would it make any change in the application and interpretation of the section?

Senator Everett: Essentially, that is my question.

Hon. Mr. Turner: I do not think so, senator.

Senator Cook: Well then, if you are satisfied that the section is all right as it is, why change it?

Senator Everett: The only point is this, if the Minister is not concerned that it changes the effect of the section, and if it satisfies Senator Flynn's argument, then I think we may have accomplished something.

Senator Hollett: I think it would be utter childishness to transfer words from one place in a sentence to another. They mean exactly the same thing no matter where they are.

Senator Everett: That is my attitude, but if it will satisfy Senator Flynn, why not do it?

Senator Cook: It means you are going to an awful lot of trouble to satisfy one person's point of view.

Senator Macnaughton: Mr. Chairman, if we change the wording as requested, does it mean that this would have to go back to the House of Commons again?

The Deputy Chairman: Yes.

Senator Langlois: Mr. Chairman, I think the crux of the matter here is that we have to make up our minds whether or not section 8 as drafted limits the right of defence of the accused to bring in evidence to discharge the burden of evidence placed against him. I do not think section 8 does limit that right of putting up a defence.

Senator Flynn: Well, that is your opinion, but other opinions have been expressed. You just tell them to go to hell. That is your attitude.

Senator Langlois: Reverting to insults, as usual.

Senator Flynn: I am not insulting anyone. You are insulting all those who do not share your views.

Senator Langlois: I am not insulting anybody. In what respect do I insult anybody? Because I do not share your views, you are insulted.

Senator Flynn: Once again we are dealing in semantics.

The Deputy Chairman: Order. We will carry this on outside with boxing gloves.

Hon. Mr. Turner: I think, in reply to Senator Langlois, that the words to which we have been referring “in the absence of evidence to the contrary” are sufficient not only to discharge the presumptions, which is the main burden of section 8, but also sufficient to open up evidence as to membership or non-membership, as Senator

Langlois says. Really, I do not see anything unclear in the bill on this particular point.

The Deputy Chairman: Any further questions?

Senator Casgrain: I just want to say that those people who are not lawyers and who cannot appreciate the fine points that the Minister has in mind may be confused, because I have been hearing people saying that the retroactivity clause is awful. So, this would clear it up. I am not, more or less, in favour of the amendment, but I am pointing out that people who are not lawyers and who are not conversant with the law sometimes get mixed up and do not understand.

Hon. Mr. Turner: In reply to Senator Casgrain, first of all fortunately lawyers are going to interpret the bill. That is why we have a legal problem. Secondly, the problem of retroactivity which has been discussed really does not deal with this particular point of Senator Flynn's. The discussion publicly has confused retroactivity of the law and retroactivity of rebuttable evidence. Senator Flynn's amendment does nothing to change that. He is dealing with the substance of the evidence and not with what may or may not be retroactivity. Even if Senator Flynn's amendment were to be accepted, it will not end the public discussion that Senator Casgrain is worried about. The public discussion is based on confusion between retroactivity of substance and the admissibility of certain evidence.

Senator Flynn: Not all the debate has been about that. Only a certain part of it. Because retroactivity has been suggested to exist for the reasons I have mentioned also.

Senator McElman: Mr. Chairman, is not this question actually boiling down to whether we are here to develop law or to develop public relations. Are we not here to develop law?

The Deputy Chairman: Any further questions?
Shall clause 8 carry?

Some Hon. Senators: Carried.

Some Hon. Senators: No.

Senator Flynn: I move formally that it be amended in the way I have indicated. I move this and I have a seconder too.

Senator Connolly: You don't need a seconder.

The Deputy Chairman: Can we have the amendment? It has been moved by Senator Flynn:

That clause 8 on page 5 of the bill be amended by striking out the words, "is, in the absence of evidence to the contrary, proof that he is a member of the unlawful association" and by substituting therefor the following:

"is, in the absence of evidence contrary to that adduced, or to the effect that he never was a member, or that, if he was a member, he ceased to belong to the said unlawful association at a time prior to the sixteenth day of October, 1970, *prima facie* evidence that he is a member of the unlawful association.

That is the amendment. Are there any questions on the amendment?

Some Hon. Senators: The question.

The Deputy Chairman: Shall the amendment carry?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Deputy Chairman: Honourable senators, we will have to put this to a vote, and only the members of the committee are entitled to vote. I understand the Chairman has a vote.

E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Yes.

The Deputy Chairman: In the regular vote or in the case of a tie?

Mr. Hopkins: In the regular vote.

The Deputy Chairman: Will all those in favour of the amendment, please signify by saying aye?

Some Hon. Senators: Aye.

The Deputy Chairman: Those contrary will say nay.

Some Hon. Senators: Nay.

The Deputy Chairman: All right. Will all those in favour, please raise your right hand?

Now will all those opposed to the amendment, please raise their right hand? The amendment is lost. The vote is three in favour and nine against.

Senator Langlois: Mr. Chairman, you did not vote.

The Deputy Chairman: That is all right, I do not have to vote unless I want to.

All right, honourable senators, clause 8 carries.

Shall clause 9 carry?

Hon. Senators: Carried.

The Deputy Chairman: Any questions on clause 9? Carried.

Senator MacDonald: Mr. Chairman, before we move on from that, should there not be something in that clause to enable the authorities to identify the person detained under the Identification of Criminals Act?

Hon. Mr. Turner: If they are charged with an indictable offence either under the bill, senator, or under the Criminal Code, then the Identification of Criminals Act automatically applies.

Senator MacDonald: But in the first three days or in the first ten days when they are detained without being charged?

Hon. Mr. Turner: They cannot be fingerprinted unless they are charged.

The Deputy Chairman: Anything further on clause 9? Shall clause 9 carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall clause 10 carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall clause 11 carry?

The Deputy Chairman: Shall clause 12 carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall clause 13 carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall clause 14 carry?

Hon. Senators: Carried.

Senator Flynn: Mr. Chairman, before we come to clause 15, there has been some discussion as to the problem of review of the decisions of the Attorney General to detain without bail any person by issuing a certificate, and other problems also related to the very special powers that are given in this bill.

It has been suggested that it was the exclusive responsibility of the Attorney General of the province to apply the law. As you say, in this act, the way it is drafted, it is so; but, in any event, this is temporary law, this is an act about which the Parliament and the Government of Canada has special responsibility. It is not exactly like the application of the Criminal Code, which is permanent law and which does not present the same problems as a temporary and exceptional law such as this one.

I would like to propose that there be some kind of review, and I have here an amendment to submit to the committee which would be enacted as clause 15, necessitating the renumbering of clauses 15 and 16. I am offering copies of the amendment for distribution to the members of the committee.

Clause 15 would read as follows:

15. (1) The Governor in Council as soon as possible after the coming into force of this Act shall appoint three persons to constitute a commission under the provisions of the *Inquiries Act*; one commissioner so appointed shall be a member of the Supreme Court of Canada, one shall be a member of the Superior Court of Quebec and be appointed upon the recommendation of the Lieutenant Governor in Council of the Province of Quebec, and the third member shall be appointed upon the recommendation of the other two members, and all members shall have a knowledge of both official languages.

(2) The Commissioners who shall be called "Public Order Act Administrators" shall inquire into, report upon and make recommendations with respect to the administration of this Act and of the *Public Order Regulations 1970* and shall report from time to time and at the same time to the Attorney General of Canada, the Attorney General of Quebec, and to the Parliament of Canada and the National Assembly of the Province of Quebec;

(3) The Public Order Act Administrators shall have all the powers of a Commissioner appointed under Parts I and III of the *Inquiries Act* and shall continue as Administrators for such period after the expiration of this Act, whether by effluxion of time or by proclamation, as the case may be, as is necessary for the carrying out of their duties under this Act.

Mr. Chairman, I might add that the minister has referred to the committee headed by Jacques Hébert, but this committee, of course, has no official status, it has no power. It may be in a position to refer matters to the ombudsman, but the ombudsman of Quebec is a person over whom this Parliament and federal Government have no authority whatsoever.

The second point I want to make is that it seems to me that since we are going to have to decide in four months, possibly, whether we should continue this act in existence, until then we should be in a position to have reports from a kind of committee that would enable Parliament to make a better judgment as to the necessity of continuing the act in existence after April 30, 1971, if it should be the recommendation of the Government at that time.

The Deputy Chairman: Mr. Turner, would you like to reply to that?

Hon. Mr. Turner: I dealt with it in some fashion earlier on, Mr. Chairman. Of course, the Government has made its position clear in the other place.

As Senator Flynn recognized, the administration of the enforcement of the provisions of this bill is, as in the case of the Criminal Code, left to the provincial Attorney General, whichever provincial Attorney General is seized of the matter—in this case, primarily the Attorney General of Quebec.

The Attorney General of Quebec has appointed a committee. I agree it is a non-statutory committee, but it is a committee in being. It has been given complete access by the Attorney General of Quebec to interview anyone detained or released under the War Measures Regulations and, presumably, under this bill. That committee has been interviewing; that committee has been receiving complaints; that committee has been making public reports; that committee has been submitting complaints to a legally constituted body called Le Protecteur du Peuple, or ombudsman, under the statutory law of Quebec.

The Prime Minister of Quebec has stated that he would be absolutely opposed to a statutory addition providing for a review committee, because he would consider that to be a reflection upon the action of a government under a federal state. The Prime Minister of Canada has agreed with that.

I just say to the members of the committee that I think in these circumstances we must treat this provincial government as we would any other provincial government, as being worthy of trust in administering this legislation with fairness, justice and compassion.

Senator Prowse: They are answerable to their own people.

Hon. Mr. Turner: And, after all, they are answerable to the people living in Quebec.

Senator Casgrain: I belong to Civil Liberties, and I have seen Mr. Hébert, and agree with what the minister has just said. I think they are trying to give a legal aspect and recognition legally to the committee that has been named. I do not yet know what the procedures are, but I know there is work being done on that.

Senator Flynn: Are they satisfied with the present status?

Hon. Mr. Turner: They are satisfied with the fact that nothing is being withheld from them and that no obstacles are being put in their way. Mr. Hébert told me that personally on Monday.

Senator Flynn: I agree that there is no obstacle, but I do not know about agreeing with the ultimate result of the action of the ombudsman.

The Deputy Chairman: Honourable senators, this amendment was read by Senator Flynn, the mover, and has been distributed to all the members of the committee, so I presume I will not have to read it again.

Senator Langlois: It has not been distributed to all the members.

The Deputy Chairman: Well, many of them were circulated. Perhaps further copies could be circulated. May we take it as having been read?

Some Hon. Members: Question!

The Deputy Chairman: Are we ready to vote on this amendment? All those in favour of the amendment, please raise their right hand.

All those against the amendment, please raise their right hand.

The amendment is lost by a vote of 3 to 8.

The Deputy Chairman: Shall clause 15 carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall the title carry?

Hon. Senators: Carried.

The Deputy Chairman: Shall the bill pass?

Senator Flynn: Mr. Chairman, just for the record I should like to say that Senator Hays raised a relevant point with respect to clause 15.

Mr. Minister, if there is a filibuster in the House of Commons—of course, we never have such things in the Senate, as you know—you could be in a position where your resolution would not be adopted before April 30, 1971 and the act, therefore, would lapse, thus putting the Government in a very difficult position. I am wondering if thought has been given to providing that the resolution

should come to a vote after one day, or something like that. It may appear to be a silly thing to put into an Act of Parliament but, after all, if you need a decision by Parliament then a few obstructionists should not be allowed to prevent the will of Parliament from prevailing. There is a great danger of the act lapsing simply because someone prolongs the debate beyond April 30, 1971.

Hon. Mr. Turner: Mr. Chairman, if I may speak to that I should like to say, firstly that I suppose it would be incumbent upon the Government to introduce such a resolution in time. Secondly, I think one has to assume that both houses of Parliament would act with responsibility at that time. Thirdly, we have always tried to avoid curtailing the privileges of either house and the procedures of either house by statute. I think we rely upon the members of the Senate and the House of Commons to discharge whatever statutory duty may be incumbent upon them.

Senator Flynn: Possibly another group of words could be found that would provide that once a resolution is introduced the act continues into force until the resolution is voted down.

Hon. Mr. Turner: The difficulty with such a provision is that we could introduce the resolution and never bring it forward for debate.

Senator Connolly (Ottawa West): The answer, I suppose, is that you do not want to legislate closure.

Mr. Chairman, I do not suppose there would be any objection if this resolution were independently considered by the Senate and dealt with prior to consideration by the House of Commons.

Senator Flynn: There is nothing to prevent our doing that.

Hon. Mr. Turner: I am not sure whether it is possible to have a resolution go through simultaneously or jointly. A resolution is not like a bill.

Senator Connolly (Ottawa West): I do not think there is any question about that, but quite apart from other considerations do you not think that this is major Government policy, and it normally should be handled primarily by the House of Commons, although there is nothing to prevent the Senate from dealing with it in advance of the House of Commons.

Hon. Mr. Turner: Except that presumably the resolution would have to originate with the Leader of the Government. However, I prefer to place myself in the hands of both houses at the time if the occasion arises.

The Deputy Chairman: Honourable senators, shall the bill pass without amendment?

Hon. Senators: Agreed.

The Deputy Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Deputy Chairman: Mr. Turner, on behalf of the Standing Senate Committee on Legal and Constitutional Affairs I should like to thank you very much for appearing before the committee this morning and spending two hours of your valuable time with us in giving a very vivid and accurate explanation of the clauses of the bill which have engendered considerable debate not only in the Senate but in the House of Commons. We feel that you have done an excellent job in explaining the controversial clause, and we hope that your explanation before this committee will find its way to the public, and

allay any fears that the public may have as to some of the features of clause 8 which have been advocated and espoused in the debate on this bill.

Hon. Mr. Turner: Mr. Chairman, on behalf of Mr. Christie, Mr. Scollan, and myself, I thank you. I should like to say that I always appreciate the courtesies that are extended to me on this side of the building. I hope that the next time I am called before you it will be to deal with a happier piece of legislation.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

No. 6

WEDNESDAY, APRIL 28, 1971

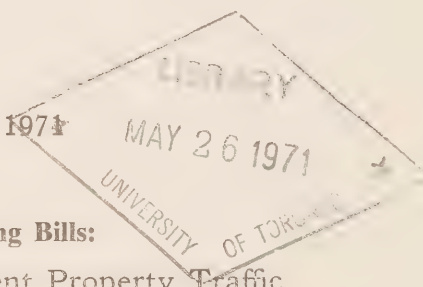
Complete Proceedings on the following Bills:

Bill S-3, "An Act to amend the Government Property Traffic Act"

Bill C-218, "An Act to amend the provisions of the Criminal Code relating to the release of accused persons before trial or pending appeal".

REPORTS OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)



THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hayden
Belisle	Hollett
Burchill	Lang
Casgrain	Langlois
Choquette	Macdonald (<i>Cape</i>
Connolly (<i>Ottawa West</i>)	<i>Breton</i>)
Cook	*Martin
Croll	McGrand
Eudes	Méthot
Everett	Petten
Fergusson	Prowse
*Flynn	Roebuck
Gouin	Urquhart
Grosart	Walker
Haig	White
Hastings	Willis

*Ex officio member

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, October 29, 1970:

Pursuant to the Order of the Day, the Honourable Senator Carter moved, seconded by the Honourable Senator Bourque, that the Bill S-3, intituled: "An Act to amend the Government Property Traffic Act", be read the third time.

After debate,

In amendment, the Honourable Senator McDonald moved, seconded by the Honourable Senator Smith, that the Bill be not now read the third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, Tuesday, April 6, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Prowse, seconded by the Honourable Senator Gelinas, for the second reading of the Bill C-218, intituled: "An Act to amend the provisions of the Criminal Code relating to the release of accused persons before trial or pending appeal".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Prowse moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, April 28, 1971.
(6)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 3:00 p.m.

Present: The Honourable Senators: Urquhart (Deputy Chairman), Connolly (Ottawa West), Cook, Haig, Lang, McGrand, Methot, Prowse, White and Willis. (10)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of Bill S-3, intituled: "An Act to amend the Government Property Traffic Act".

On Motion of the Honourable Senator Haig it was Resolved to report as follows:

"The Committee recommends that the Bill not be proceeded with further in the Senate in view of the following letter received on March 23, 1971, by the Deputy Chairman from the Honourable Arthur Laing, P.C., Minister of Public Works:

'It would be appreciated if you could report to the Senate Legal and Constitution Affairs Committee that the Department of Public Works does not wish to proceed further with the subject bill because of various technical problems which have recently come to light involving municipal provincial and federal relations'."

The Committee then proceeded to the consideration of Bill C-218, intituled: "An Act to amend the provisions of the Criminal Code relating to the release of accused persons before trial or pending appeal".

The following witnesses, representing the Department of Justice, were heard in explanation of the Bill.

Mr. John N. Turner, P.C., M.P., Minister of Justice and Attorney General of Canada;

Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice.

The following was present but was not heard:

Mr. Albert Béchar, M.P., Parliamentary Secretary to the Minister of Justice.

On Motion of the Honourable Senator Willis it was Resolved to report the said Bill without amendment.

On Motion of the Honourable Senator Haig it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

At 3:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Reports of the Committee

Wednesday, April 28, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-3, intituled: "An Act to amend the Government Property Traffic Act", has in obedience to the order of reference of October 29, 1970, examined the said Bill and now reports as follows:

The Committee recommends that the Bill should not be proceeded with further in the Senate in view of the following letter received on March 23, 1971, by the Deputy Chairman from the Honourable Arthur Laing, P.C., Minister of Public Works:

"It would be appreciated if you could report to the Senate Legal and Constitutional Affairs Committee that the Department of Public Works does not wish to proceed further with the subject bill because of various technical problems which have recently come to light involving municipal, provincial and federal relations." (Letter attached)

Respectfully submitted.

Wednesday, April 28, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-218, intituled: "An Act to amend the provisions of the Criminal Code relating to the release from custody of accused persons before trial or pending appeal", has in obedience to the order of reference of April 6, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Earl W. Urquhart,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, April 28, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs, to which were referred Bill S-3, to amend the Government Property Traffic Act, and Bill C-218, to amend the provisions of the Criminal Code relating to the release from custody of accused persons before trial or pending appeal, met this day at 3 p.m. to give consideration to the bills.

Senator Earl Urquhart (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, it is now 3 o'clock. Until the Minister of Justice arrives I think the committee can deal with Bill S-3, to amend the Government Property Traffic Act.

It will be recalled that the bill was sponsored by Senator Carter. It is a simple bill which was expected to have quick and easy passage through the Senate until it came to second reading, when Senator Flynn, the Leader of the Opposition, asked why it was necessary to specifically state in the bill that all the fines would be the property of Her Majesty in the right of Canada.

The question was taken as notice and second reading was given. On the motion for third reading, two days later, an amendment was moved to have the bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

We searched around for weeks and months for an answer, and were not able to get an answer as to why this bill was necessary. Finally I received a letter from the Honourable Arthur Laing which reads as follows:

Dear Senator Urquhart:

It would be appreciated if you could report to the Senate Legal and Constitutional Affairs Committee that the Department of Public Works does not wish to proceed further with the subject bill because of various technical problems which have recently come to light involving municipal, provincial and federal relations.

Senator Haig: In other words, they are going to drop the bill.

The Deputy Chairman: They are going to drop the bill, and wish us not to proceed with it any further. Is that agreed?

Hon. Senators: Agreed.

Senator Lang: Can you surmise why they ever brought it forward in the first place?

The Deputy Chairman: I think the problem involved the municipal courts and the fines.

Senator Lang: In other words, the money was going to the provinces and they were going to try and put it in their own pocket.

The Deputy Chairman: I think there was a little conflict there. They are going to leave things as they are.

Shall I report, honourable senators, as follows:

The committee recommends that the bill should not be proceeded with further in the Senate in view of the letter received on March 23, 1971 by the Deputy Chairman from the Honourable Arthur Laing, P.C., Minister of Public Works.

And I have just read the letter, of which you have a copy.

Is that satisfactory, honourable senators?

Hon. Senators: Agreed.

The Deputy Chairman: We shall now consider Bill C-218, the bail reform bill. This bill was introduced in the Senate by Senator Prowse for the Government, and the main speech for the Opposition, was delivered by Senator Willis.

Today the Minister of Justice and Mr. Scollin, the Director of the Criminal Law Section of the Department of Justice, who is presently here, are going to answer our questions relating to the bill. While we are waiting for the minister, perhaps we can just chat informally. Chat informally and off the record.

Senator Prowse: Mr. Chairman, perhaps we can start with Mr. Collin, and ask him to answer any questions of a technical nature that we have.

The Deputy Chairman: Honourable senators, this is Mr. John A. Scollin, director, Criminal Law Section, Department of Justice. We will accept Senator Prowse's suggestion and discuss any technical questions that we have until the minister arrives.

Senator Prowse: I wonder if we could start going through the bill section by section, and if there are any questions we can deal with them. If there is anything the minister should answer, he can do it when he arrives. Otherwise we will be sitting around for some time with very little purpose.

The Deputy Chairman: Honourable senators, Mr. Scollin would prefer to deal with the bill on a question and answer basis. Is that agreeable to the committee?

Senator Cook: We do not want to go through it section by section.

The Deputy Chairman: No. It is mainly the general principle of the bill that we want to get at.

Have honourable senators any particular questions they would like to ask of Mr. Scollin, until the minister arrives, because the minister will give us a general summary of the bill and the general principle of it. I do not think it is too complicated a bill, and I think it is generally well received.

Senator Prowse: Mr. Chairman, section 445A (7) on page 24 deals with justification for detention in custody. Perhaps Mr. Scollin would tell us what the purpose of that particular subsection is.

Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice: This subsection (7) is designed as a statutory formulation of all the grounds that should be considered in relation to the question of pre-trial release.

An order of detention by the justice cannot be justified except on one or other of these two grounds. Paragraph (a), which is specified as the primary ground, is basically the real point of the bail system. That is, the securing or ensuring that the accused will attend for his trial, and attend when required by the court. Some of the case law has tended to the view that this is the sole and only ground on which detention can ever be justified.

Paragraph (b) is classed as a secondary ground, and this deals with the public interest factor. You will note that the applicability of paragraph (b) only arises after a determination has been made in relation to the primary ground—that is, the attendance or non-attendance of the accused. If the justice at the bail hearing decides or has reason to believe that the accused will not attend and makes an order of detention, that is the end of the matter. Paragraph (b), in fact, only arises if the justice, having disposed of and made a determination on ground (a)—that is the likelihood of the accused's attending—has determined that ground in favour of the accused, and in effect says, "Crown, you have not shown us sufficient grounds for believing that this person will not attend", and at that point only does the justice go on to consider whether on grounds other than the question of attendance is the detention justified. You will see that that secondary ground is formulated as follows:

—that his detention is necessary to the public interest or for the protection or safety of the public, having regard to all the circumstances including—

The reason for specifying these "includings" is really to make sure that no sort of light-hearted effort is made to consult any old public interest. The idea is that it is some serious, substantial public interest that is being consulted. In the kind of examples of public interest that are given, the bill includes "any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence involving serious harm." There is nothing conjectural about that. The fact that he might pick somebody's pocket is not to be regarded as a justification for detaining him in custody. The offence that is contemplated is a criminal offence involving serious harm or,

particularly, an interference with the administration of justice.

The idea is to make a statutory formulation, allocate the importance of the two grounds, make sure that the court direct its mind basically to the question of attendance and then, only after it has determined that in favour of the accused, go on to these other considerations of the public interest.

Senator Prowse: The public interest would include a private interest, in that with regard to a person who had tried to knife somebody there might be reason to believe that if he got out he would succeed on a second attempt.

Mr. Scollin: Yes, I think this is so. One does run across these situations where a chap has attempted, for example, to kill his wife and has been unsuccessful, and the clear indications are that if he is turned loose he will try to finish the job.

I might just add that obviously it would be impractical to attempt to provide a definition of public interest by listing a series of things. It will have to be left to the good sense of the courts, given the guidance they are given now.

Senator Prowse: Mr. Scollin, Section 445(A)(1) on page 22, provides for release on undertaking which I think basically underlines the whole bill. Perhaps you might care to comment on that.

Mr. Scollin: In line with the general philosophy of the bill, the idea is to get away from cash and property security, and acknowledgements of debt to the Queen, which are constituted by a recognizance, and to take the view that by and large a man's word that he is going to turn up should be good enough. If he gives the court this undertaking that he will turn up when he will be required, then he should be released. This is set up as a prime method of release, unless the Crown, on whom the onus is clearly cast, shows either that the detention is justified within the meaning of subsection (7) or that some other more onerous method of release, as set out in the other subsections, is justified. Unless the Crown actually shows that, then the rule should be that the accused is released on his own undertaking to turn up, and no conditions are imposed. With respect to anything more onerous than that, the general rule is that it has to be justified by the Crown.

Senator Prowse: Does this bill on the whole change, in any way, the right or responsibility of the police to arrest and detain a person who has committed what we will call a serious offence—let us say armed robbery.

Mr. Scollin: Armed robbery is not one of the situations where there is a special obligation on the police, for example, not to arrest under section 436, nor is it a case where the officer in charge of the station is under a statutory obligation, as he is in section 439, to release the man. But when the matter comes before the justice under section 445A, this is as applicable in its terms to robbery as to any other offence but, of course, the more serious the offence, then perhaps the less the onus is on the Crown to show that something more than just an undertaking is desirable.

That is why, again trying to encourage release, provision has been made in subsection (4), on page 23, for the imposition of certain conditions. So that even in a charge of robbery, if the justice decides an unconditional undertaking is perhaps a little bit thin, he is then obliged to consider whether under subsection (2)(a) the man's promise tied in with conditions about his behaviour during his release is an adequate means of ensuring his attendance.

Those conditions, as set out in subsection (4), are pretty broad and the object is, as I say, to encourage release whenever possible. If in the case of robbery, for example, it appears there is a strong likelihood of the man's turning up but in the meantime the only safe measure is to have him remain within the jurisdiction, or report from time to time to the police, then conditions of that sort can be imposed.

Senator Prowse: Is there in the bill, generally, any carry-over of the proposition that the release of a person should be conditional upon payment of cash—either a cash bail or a property bail—or is it just a matter of either turning him loose or, if the public safety requires that he be kept in custody, putting him in custody. In other words, are we doing away entirely with cash bail, or monetary considerations for bail?

Mr. Scollin: As far as the actual deposit of cash security is concerned, it is only in very limited circumstances that that can be required, and then only as a last resort.

Section 445A (2)(d), on page 23, sets out the only circumstances in which an accused can be required to deposit cash or security. Those circumstances are where he is not ordinarily resident in the province where he is in custody, or where he lives more than 100 miles away from the place where he is in custody. I think it is probably worth while pointing out that by virtue of subsection (3) that is a last resort, because the justice is obliged and bound not to make an order under that paragraph until he has exhausted the previous provisions. The Crown really has to show in all of these cases that a less onerous method of securing his attendance just will not do.

As far as the release by the police is concerned, there is a provision in section 439 that would permit the desk officer to require a deposit of some kind.

The Deputy Chairman: Honourable senators, we are delighted to have with us this afternoon the Honourable John Turner, the Minister of Justice and Attorney General of Canada, who has a busy schedule this week of constitutional talks with the provincial premiers in various parts of Canada.

We were able to obtain permission, Mr. Turner, to meet this afternoon while the Senate is sitting, and we are happy that you are here to deal with Bill C-218, which is commonly referred to as the bail reform bill. I think I can report to you that the bill has been well received. We are going to give you a free rein to deal with it as you see best.

The Honourable John N. Turner, Minister of Justice: Mr. Chairman and honourable senators, I want to thank you, first of all, for your courtesy in hearing me, and I

offer my apologies for being late. I have just got out of the other place after the Question Period. I thank the Senate for its courtesy in suspending its rules to allow this hearing to be held this afternoon. I was in New Brunswick and Newfoundland yesterday, on behalf of the Prime Minister, seeing whether I can narrow the scope of those areas of potential agreement, and to isolate those areas of disagreement, for the forthcoming Constitutional Conference, so that the first ministers, when they meet in Victoria, will have an opportunity of dealing with issues capable of resolution. I am leaving tomorrow for British Columbia, the last of the ten provinces I am visiting for this purpose.

There is not much I can add to what Senator Prowse said when he moved the second reading of this bill in the upper house. I wrote and told him that it was as able a presentation of a piece of complicated legislation as I had read either in the House of Commons or the Senate, not only for his mastery of technical details—and this is a very difficult bill in that the Criminal Code is not an easy piece of legislation—but also for his ability to seize the spirit of what the Government is attempting to achieve.

The bill is based in its major respects, as he pointed out, the report of the Committee on Corrections which was under the chairmanship of Mr. Justice Roger Ouimet. Mr. Arthur Martin, Q.C., of Toronto, was the vice-chairman of that committee. We introduced it first on June 8 of last year for the purpose of first reading only, and we let it sit the entire summer and most of the autumn in order to allow the law enforcement authorities of Canada, people who were involved with the criminal law, and those who, as citizens, took an interest in the criminal law, to make comments about it. I discussed it for half a day at the meeting of attorneys general which was held in Halifax last July. Those 10 gentlemen and myself spent a whole half-day going over the bill, and they had been properly prepared by their own department. The Canadian Bar Association, in Halifax again, in September at its annual meeting went through the bill thoroughly.

I appeared before the Canadian Association of Chiefs of Police on two occasions—at their annual convention in London, and with their executive which met with the Royal Canadian Mounted Police a month or so ago in Ottawa. As a matter of fact, I tabled before the committee of the other place, Mr. Chairman, a letter of support from the Canadian Association of Chiefs of Police, saying that they were satisfied now with the principles of the bill, particularly after the amendments that I introduced had been made.

We met the Ontario Police Association and the Montreal Brotherhood of Police. We received representations from the Quebec Police Commission, the Ontario Police Association, the Canadian Police Brotherhood, and the Provincial Association of Quebec Judges. The Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation—that is to say, those ladies and gentlemen representing the federal and all provincial jurisdictions including the Deputy Attorney General of Canada and the Deputy Attorneys General of all the provinces, together with their commissions—met in

Prince Edward Island prior to the Canadian Bar Association meeting in Halifax, and went through the bill clause by clause.

What I am saying to you is that we felt that this bill, because of its sensitive nature and the fact that it is concerned with the first contact between the ordinary man and woman who runs afoul of the law at the arrest stage, and subsequently at the bail stage, and because it is as important as any piece of legislation in determining the attitudes of ordinary citizens to the criminal law, should be given the widest scrutiny possible.

Some amendments were made to the bill during last summer before it was re-introduced as Bill C-218 on January 21 of this year. Further amendments were made by the Standing Committee of Justice and Legal Affairs of the other place. That does not make it a perfect bill, but it does illustrate the fact that a number of minds are better than one, even the minds of Mr. Christie, the Deputy Attorney General, and Mr. Scollin, who had the major part of preparing this bill within the department. The minds that have been brought to bear on this bill have been impressive and we are grateful to them, and we are grateful to honourable senators for their observations in the Senate.

What we are trying to do is cut down the power of arrest; to place a reasonable obligation on the policeman on the beat and behind the desk, in cases where he can do so without jeopardizing proper law enforcement, to release or issue a summons or appearance notice, and to use the power of arrest only where necessary. I am talking about the minor and less serious offences. There is no doubt about the fact—and this was an amendment made in committee in the other place—that in the serious offences the justification for arrest is paramount.

We are trying to clarify the rules for the granting or withholding of bail; to make it clear that the burden of proof is on the Crown to establish why an accused should not go out on bail; and to set forth guidelines for justices of the peace, magistrates, provincial judges, and judges, so that they may have some guidance as to what the criteria are. The first criterion is—and this is the classic one out of the British common law—whether the accused will show up for trial. That is what bail is all about. The second criterion is, even if it is certain that the accused person will show up for trial whether there will be a risk to the public interest or the safety of the public, to the accused, or to the preservation of evidence, if he or she is let out on bail. The present law is very long on discretion, and very short on direction. We have set forth statutory guidelines in the bill, as Senator Prowse pointed out on second reading in the Senate.

The aims of the bill are quite simple: to avoid unnecessary arrest whether with or without warrant; to encourage the earliest possible pre-trial release on bail; if bail is not granted, to accelerate trial so that pre-trial detention is shortened as much as possible; and really to establish, in a practical way, the presumption of innocence, that the man or woman who is accused of a crime is considered by the law and by the procedures under the law to be innocent until adjudged by a court of his or her own peers to be guilty.

We have tried to equalize also the application of the law as it affects those with wealth and those without wealth; those with influence and those without influence. We have tried to eliminate, as far as possible, the consideration of cash bail. If a person can establish community identity—that he has lived in a place, that he has a job, that he has a family, that he has responsibilities, and that there is every likelihood he is going to face trial—then whether or not he is able to put up cash bail is irrelevant. In certain cases, of course, particularly in motor offences where a person is driving through a community and involved in some sort of criminal charge, it might be impossible to establish identity with the community. In such a case we have provided that where the jurisdiction is more than 100 miles from his residence, and cash bail is the only way by which he can show that he will come back for his trial, cash bail may be placed as a last resort.

I have one final observation to make. This bill, if it achieves the approval of the Senate and thereby of Parliament, will not work unless the law enforcement officers of this country—the police, the judges and magistrates, and justices of the peace—want to make it work. The spirit contained in this bill must be adopted by the police and the magistrates.

I and my parliamentary secretary, Albert Béchard, the Member of Parliament for Bonaventure, who pilots my bills with me through the other place, spent a great deal of time consulting with the police as to assure them that the bill would work, that they could technically make it work, and also to convince them that although it restricted their power of arrest, although it placed certain additional burdens upon them, it was in their interest that these burdens be placed upon them, because if they could shorten and narrow the areas of abrasive contact with the public and cut down abuse of the power of arrest, if they could accelerate the use of bail, then the relationship between the police forces of this country and the ordinary Canadian citizen would improve a good deal. It will allow them to deploy their forces far better. Instead of a policeman having to bring somebody to the desk and book him for a relatively minor offence, he could issue a summons or appearance notice. This, in terms of time, will allow for a better deployment of police-officers in the police cars and on the beat. I believe the police forces of this country are convinced of that. We have made it clear by the amendments that they are not to be criminally held to account if they should make an honest error in judgment. They are not even civilly to be held for account if they make an honest error in judgment. The burden of proof in a civil case is on the person who claims the policeman did not properly exercise his judgment. We have clarified all that area that I think the police quite legitimately, were concerned about when they first saw the bill.

I have asked the provincial attorneys general to issue and improve their police manuals—to reduce the words of this bill to even simpler language—and to improve their manuals for magistrates and justices of the peace. I have asked the Royal Canadian Mounted Police, who are drafting a manual for the federal police, to put their

drafts in the possession of the Quebec and Ontario provincial and the metropolitan police forces. This is not to bind them as to what a manual should say, but to guide them in the necessary police education that is fundamental to the proper operation of this bill.

I think that is all I want to say, Mr. Chairman, because Senator Prowse made my case for me better than I can.

Senator Willis: Mr. Chairman, I spoke for the Opposition on this bill in the Senate. I commended the minister for this step in the right direction. I think it is a good bill and, as far as my party is concerned, we are in favour of it in its present form.

I take this opportunity to move that the bill be reported without any further amendment, and without going through it section by section.

Senator Lang: I have not followed this bill closely, I am afraid. Does this bill in any way affect the time lapse between an arrest without warrant and an appearance before a J.P.?

Hon. Mr. Turner: It accelerates the appearance. There has to be an appearance not only within 24 hours, but without unreasonable delay. That means the burden is on the police not to take advantage of the 24-hour maximum but to get an arrested person before a Justice of the Peace without unreasonable delay.

Senator Prowse: It shortens the period.

Hon. Mr. Turner: Yes, it accelerates the appearance.

Senator Lang: I am not certain what the present provisions are, but that is where you run into a very common experience with a client.

Hon. Mr. Turner: In some jurisdictions police tend to rely on the 24 hours. They now have the burden of bringing an accused person before the desk of a Justice of the Peace without unreasonable delay.

Senator Prowse: And within 24 hours at the maximum.

Hon. Mr. Turner: Yes.

Senator Lang: I am just wondering how it stands now. I believe there are no time limits set.

Mr. Scollin: Yes, Senator, there are. The present section 438 (2)(a) of the Code provides that "Where a justice is available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice before the expiration of that period." The provision in this bill is that he shall be taken before the justice without unreasonable delay and, in any event,

within 24 hours. So, 24 hours is not a standard holding period now; it is a maximum.

Senator Lang: Those are cases where you experience extreme embarrassment, particularly when you get calls in the night from your friends saying they are in the tank.

Senator Haig: And, usually at 3 o'clock in the morning.

The Deputy Chairman: Honourable senators, if there are no further questions of the minister, we have a motion that we report the bill without amendment. Is it agreed.

Hon. Senators: Agreed.

The Deputy Chairman: Then Bill C-218 will be reported to the Senate without amendment?

On behalf of the Legal and Constitutional Affairs Committee, Mr. Turner, I should like to thank you very much for taking time out to appear here this afternoon. You always come well prepared for discussion of any bill relating to your department, and today you have been very convincing in all the arguments that have been put forward. Your presentation was excellent.

We commend also Senator Prowse for the presentation he made in the Senate, and Senator Willis for his speech on behalf of the Opposition in which he pledged the full support of his party to the passing of this bill.

Hon. Mr. Turner: Mr. Chairman, I thank you and your committee for your usual courteous hearing. I always enjoy coming here. I want to say to Senator Willis that I did not respond to his speech in the same terms that I acknowledged Senator Prowse's speech because I thought it might be interpreted by his colleagues as my having succumbed to his flattery of me in the Upper House. I appreciate what he said very much.

The Deputy Chairman: It is all right for me to say it.

I should also like to thank Mr. Scollin, the Director of the Criminal Law Section of the Department of Justice, for appearing this afternoon, and also, the Minister's parliamentary secretary, Mr. Béchard.

We look forward to seeing you, Mr. Minister, on a future occasion when we will be discussing the statutory instruments bill.

Senator Prowse: Mr. Chairman, to save myself some embarrassment I point out that if my presentation was at all useful, it was because of the excellent briefing I received from Mr. Scollin.

The Deputy Chairman: Thank you.

The committee adjourned.

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

No. 7

THURSDAY, MAY 6, 1971



Complete Proceedings on the following Bills:

Bill S-19 : "An Act respecting the Royal Victoria Hospital"

Bill C-182: "An Act to provide for the examination, publication,
and scrutiny of regulations and other statutory
instruments"

First Proceedings on the Motion respecting the "*Criminal
Records Act*"

REPORTS OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hayden
Bélisle	Hollett
Burchill	Lang
Casgrain	Langlois
Choquette	Macdonald (<i>Cape</i>
Connolly (<i>Ottawa West</i>)	<i>Breton</i>)
Cook	*Martin
Croll	McGrand
Eudes	Méthot
Everett	Petten
Fergusson	Prowse
*Flynn	Roebuck
Gouin	Urquhart
Grosart	Walker
Haig	White
Hastings	Willis

*Ex officio member

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, April 1, 1971:

The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Flynn, P.C., resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator McDonald, for the second reading of the Bill C-182, intituled: "An Act to provide for the examination, publication and scrutiny of regulations and other statutory instruments".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, Wednesday, April 28, 1971:

The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Hastings resumed the debate on the motion of the Honourable Senator Hastings, seconded by the Honourable Senator Prowse:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the operation and administration of the *Criminal Records Act*, chapter 40 of the statutes of 1969-70, and in particular upon the operation and administration of subsection (2) of section 4 thereof.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative, on division.

Extract from the Minutes of the Proceedings of the Senate, Thursday, April 29, 1971:

Pursuant to the Order of the Day, the Honourable Senator Beaubien moved, seconded by the Honourable Senator Willis, that the Bill S-19, intituled: "An Act respecting the Royal Victoria Hospital", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Beaubien moved, seconded by the Honourable Senator Willis, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, May 6, 1971.

(7)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 3:00 p.m.

Present: The Honourable Senators Urquhart (*Deputy Chairman*), Belisle, Burchill, Choquette, Cook, Fergusson, Grosart, Haig, Hastings, Lang, Martin, Macdonald (*Cape Breton*), McGrand, and Prowse—(14).

The following Senators, not members of the Committee, were also present: The Honourable Senators Beaubien, Benidickson, Laird and Quart.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel, and Director of Committees.

On motion of the Honourable Senator Choquette it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

The Committee proceeded to the consideration of Bill S-19, intituled: "An Act respecting the Royal Victoria Hospital".

The following witnesses were heard in explanation of the Bill:

The Honourable Senator L. P. Beaubien

Mr. D. R. McMaster, Q.C., Counsel for the Royal Victoria Hospital.

The following witness was also present but was not heard:

Mr. D. J. MacDonald, Executive Director of the Royal Victoria Hospital.

On Motion of the Honourable Senator Macdonald it was Resolved to report the said Bill without amendment.

The Committee then proceeded to the consideration of Bill C-182, intituled: "An Act to provide for the examination, publication and scrutiny of regulations and other statutory instruments".

The following witnesses were heard in explanation of the Bill:

Mr. John N. Turner, P.C., M.P., Minister of Justice and Attorney General of Canada;

Mr. P.O. Beseau, Legislation Section, Department of Justice.

The following witness was also present but was not heard:

Mr. Albert Béchar, M.P., Parliamentary Secretary to the Minister of Justice.

On Motion of the Honourable Senator Belisle it was Resolved to report the said Bill without amendment.

The Committee then proceeded to the consideration of the following Motion by the Senate:

"That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the operation and administration of the *Criminal Records Act*, chapter 40 of the statutes of 1969-70, and in particular upon the operation and administration of subsection (2) of section 4 thereof."

On Motion of the Honourable Senator Prowse it was Resolved to appoint a Subcommittee of five senators to consider the Motion from the Senate and which will report its recommendations to the Committee in due course.

The following Senators were named on the Subcommittee: The Honourable Senators Belisle, Choquette, Hastings, McGrand and Prowse.

It was Resolved that three senators will constitute a quorum for meetings of the Subcommittee.

It was also Resolved that the members of the Subcommittee elect one of the members as Chairman of the Subcommittee.

At 4:20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Reports of the Committee

Thursday, May 6, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred the Bill S-19, intituled: "An Act respecting the Royal Victoria Hospital", has in obedience to the order of reference of April 29, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Earl W. Urquhart,
Deputy Chairman.

Thursday, May 6, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred the Bill C-182, intituled: "An Act to provide for the examination, publication and scrutiny of regulations and other statutory instruments", has in obedience to the order of reference of April 1, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Earl W. Urquhart,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Thursday, May 6, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, respecting the Royal Victoria Hospital, and Bill C-182, to provide for the examination, publication and scrutiny of regulations and other statutory instruments, met this day at 3.00 p.m. to give consideration to the bills.

Senator Earl W. Urquhart (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we have a quorum so we shall proceed to the work before us this afternoon.

Our first item of consideration is Bill S-19, respecting the Royal Victoria Hospital. The sponsor of the bill, Senator Beaubien, is sitting on my right. He has pointed out that the main purpose of this bill is to take the Royal Victoria Hospital within the provisions of the Quebec Hospitals Act. We have with us also this afternoon Mr. McMaster of the legal firm of McMaster, Meighen, Minnion, Patch and Cordeau, who has been the solicitor for the Royal Victoria Hospital for many, many years, and Mr. MacDonald, the Executive Director of the Royal Victoria Hospital. These gentlemen will be only too happy to explain any provisions of the bill which require further explanation.

I should point out before we begin our discussion of this bill that I have a letter from Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel advising me, as Chairman of this committee, of the following:

In my opinion, Bill S-19, is in proper legal form.

I shall now ask Mr. McMaster or Mr. MacDonald to make a general statement concerning the bill.

Mr. D. R. McMaster, Q.C., Counsel, Royal Victoria Hospital: The charter of the Royal Victoria Hospital has been in effect since 1887 without any changes whatsoever. There are certain restrictions in that charter which make it very difficult for the hospital to operate today under the provisions of the Quebec Hospitals Act. We are asking for these changes so that we can comply with those provisions.

There is also provision in the act which requires us to approach all the heirs of the original benefactors in respect of any change. Today that is out of the question.

Senator Prowse: I am sorry, but I did not hear you.

Mr. McMaster: The original benefactors of the hospital, Baron Mount Stephen and Lord Strathcona who gave \$1 million, provided that the act cannot be changed unless

all their descendents agree and specifically request it, and today that is impractical.

The Deputy Chairman: That is the main provision now, is it?

Mr. McMaster: That is right.

Senator Prowse: And this amendment sets it up in a practical way on the basis of today's considerations?

Senator Beaubien: They have to conform with the Quebec Hospitals Act, which they cannot do unless Parliament amends their charter. As the charter now stands it does not conform with the Quebec Hospitals Act.

Senator Choquette: What are the changes in the Quebec Hospitals Act today that cause you to come to Parliament for amendment of your act of incorporation. What are the changes that have been made so suddenly—it appears to be that way—in the Quebec Hospitals Act that require your coming here?

Senator Beaubien: That act was passed in 1964, Senator Choquette. There have been no changes in it. The hospital has not been able to conform in many ways, and they are coming here so that they can.

Mr. McMaster: In accordance with the Quebec Hospitals Act we have filed our by-laws, and they have refused on the basis that they do not comply.

Senator Prowse: Your non-compliance would be in the fact that you have the right to establish other hospitals outside their jurisdiction?

Mr. McMaster: That is just one minor point, sir.

Senator Prowse: It is the one that I see here.

Mr. McMaster: Yes, that is the very first article. We have the right to establish branches, according to the federal legislation, but the Quebec Hospitals Act contemplates but one hospital.

The Deputy Chairman: Are there any further questions, honourable senators?

Senator Benidickson: How significant is clause 2? The purpose of the amendment is to remove the hospital's power to establish branches outside Quebec.

Mr. McMaster: The answer to that question, sir, is that I do not think the Quebec Hospitals Act could have anything to do with hospitals outside the province, but we have the right to establish branches.

The Deputy Chairman: Is it agreed that I report the bill without amendment.

Hon. Senators: Agreed.

The Deputy Chairman: On behalf of the committee I thank Mr. McMaster and Mr. MacDonald for appearing on behalf of the Royal Victoria Hospital, and also Senator Beaubien for presenting the bill and appearing with us this afternoon.

The Deputy Chairman: Honourable senators, our next item of consideration is Bill C-182, known as the Statutory Instruments Bill. You will recall that we had a lengthy and very instructive debate on statutory instruments in the Senate, and we also had the privilege of having the Honourable John Turner, Minister of Justice, appearing before this committee with respect to statutory instruments on Wednesday, June 17, 1970. At that time he dealt very fully with the whole question of statutory instruments, delegated powers, regulations and so forth. He pointed out at that time that legislation would be introduced to replace and repeal the Regulations Act.

We now have Bill C-182 before us and I shall call on the Honourable John Turner, Minister of Justice, to make a general statement on the bill, after which honourable senators may put to him their questions.

The Honourable John N. Turner, Minister of Justice: Mr. Chairman and honourable senators, I do not feel it is necessary to make too long an opening statement before this committee. Senator Martin has represented the Government in the upper house, and indeed this committee has taken a special interest in the review of delegated legislation and the review of what are called in a wide global way, statutory instruments.

Mr. Chairman, you have refreshed my memory, because I recall appearing before this committee and participating in a general discussion of what methods might be used for a better review of regulations, statutory instruments, which is a wider term than "regulations" as defined in the bill. We discussed how Parliament could review legislative powers which it delegates to administrative boards, tribunals, ministers and the Governor in Council and so on, because the legislative function of Parliament is being delegated more and more, and while the legislation itself is subject to the review of Parliament over the past generation we, the legislators, have lost a good deal of control over delegated legislation. No only have we lost control, but we do not really know what is happening. It is not only delegated legislation which is beyond Parliamentary review, but a lot of it is anonymous, a lot of it is unpublished, and a lot of it is not available for inspection.

The primary purpose of this bill is to provide a more open government. It is not a perfect piece of legislation by any means, but I think it does provide a significant step forward. It is based primarily on the Third Report of the Special Committee on Statutory Instruments of the other place made under the chairmanship of the honourable member for Windsor-Walkerville, Mr. Mark MacGuigan. I am sure honourable members are familiar with

that report and indeed, if I recall correctly, we discussed this the last time.

Senator Benidickson: When you say "we", Mr. Minister, do you include your colleagues in the Cabinet? These matters have to be ratified, in large measure, by them.

Hon. Mr. Turner: No, when I used the term "we" I meant you and I, senator, and I was referring to the last time we—I, as your witness, and you, as a member—were discussing the problem of statutory instruments, and reviewing this committee report. Since that date the Government has ratified the report, in the sense that we have brought forth legislation that we hope implements it.

I do not intend to go through those recommendations one by one. I did that in the House of Commons, and if members of the committee are interested they can see a list of the recommendations of the committee and my appraisal of how the Government implemented them or did not implement them. Some of them could not be implemented in practical terms, and some of them will have to be implemented by the House of Commons or by the Senate, or both, when a scrutiny committee is set up.

I submit that this bill will provide a more open Government in a number of ways. First of all, subject to narrowly defined exemptions, all regulations will be published in the *Canada Gazette*. This will be enforced by means of a mandatory registration system whereby a regulation will not come into force until it is registered. That is not the case now.

Second, rules, orders and regulations governing the practice or procedure of federal judicial or quasi-judicial bodies will be subject to the requirements of the new legislation.

Third, members of the public will be given a statutory right to inspect and obtain copies of statutory instruments subject to certain exemptions to be provided under the bill. At the present time, the public of Canada have no right to see or obtain a copy of any statutory instrument.

Fourth, a scrutiny committee of Parliament will be given the right to examine virtually all statutory instruments that are made. By providing for a scrutiny committee of Parliament the Government has left the position open. We have not spelled out in the legislation what form that scrutiny committee shall take. We have not specified whether it should be a committee of the House of Commons or the Senate, or a joint committee of both houses. I dislike putting into legislation any impediment of the full prerogative or privilege of either the House of Commons or the Senate. I think the terms of reference of those committees, as they appear under the umbrella of the legislation, should be left to the respective houses. I think also it will be up to the Senate and the House of Commons to decide in consultation between them whether it will be more efficacious to have a separate committee of the Senate or a separate committee of the House of Commons, or a joint committee. I would anticipate, from what I know of members of this committee and their interest in the subject, Mr. Chairman, that the Senate in any event will want to be involved. Frankly, I think a

committee of the Senate would be an admirable vehicle for the type of work envisaged for a review committee.

Senator Grosart: Mr. Chairman, may I ask the minister a question on that particular point? It seems to me that under the bill the powers of any such committee are restricted to reviewing. Mr. Minister, how far could such a committee set up by either house, or a joint committee, go beyond the powers that the bill would give it which, as I understand it, would be limited to reviewing. As I understand the bill, there is not even the power to report. Not having the power to report, would such a committee be entitled to say that it is going to report and, if so, to whom?

Hon. Mr. Turner: The committee can be given any power that the respective house wants to give it. All the bill says is that there will be a statutory review committee to which all regulations will be referred. The type of committee and the powers that it will be given will depend upon the rules as they are adjusted of either the House of Commons or the Senate, or both. There will be the power to review and the power to report. There are powers which are available, if a house should so wish, to provide that reports would be made on motions. That is left completely open. In other words, we have in no way restricted the latitude of either the House of Commons or the Senate to deal with this. That is for Parliament, and the two respective Houses of Parliament, to decide.

I take your point, senator. The committee has primarily the power to review. How effective that review is depends on what powers each house gives to it. Obviously, the initiative of promulgating the regulations lies with the Executive somewhere. It is obvious that the committee itself will not have the power to redraft regulations. It might suggest a redrafting, but its power will lie primarily in whatever inherent power is given to it by the respective house.

Senator Grosart: Is there not a degree of window dressing in this, because that power already exists. Neither house needs this Bill to exercise that power now. You are giving no additional powers. It is there now.

Hon. Mr. Turner: Senator, with the greatest respect, we are. At the moment there is no way by which either the committee or the House of Commons can be seized of the regulations under the Regulations Act. This makes it mandatory for a committee or two committees, or a joint committee, to be seized of the regulations. Once they are seized of those regulations or, more properly, statutory instruments, then the full power of the House of Commons or the Senate is available.

Senator Grosart: Would you not agree that either house could appropriate those powers at any time? The House of Commons can set up a committee now to do this very thing. What is there to stop it?

Hon. Mr. Turner: There is nothing within the Regulations Act to ensure that those regulations would be submitted to your committee.

Senator Grosart: No, I am not speaking about that. There is no question that other sections of the bill do

things to these regulations. I am speaking only of the very essential part of it, and that is the review. It is true that under the bill the regulations, if you like, are more open and available. I am suggesting to you that there is nothing in this bill that gives the review committee of either house, or a joint committee, one iota of power that is not available to it now if it wants to exercise it.

Hon. Mr. Turner: You are right in the sense that the power of that committee is not changed, because Parliament will decide what powers will be. The essential change is fundamental. At the moment there is no way by which a committee of the House of Commons or a committee of the Senate could be seized of the regulations.

Senator Grosart: Parliament is supreme. Parliament can seize itself of anything it wishes.

Hon. Mr. Turner: You cannot hit what you cannot see, senator. At the moment, you do not know what the regulations are and that is part of the problem. We are now bringing this out into the open.

Senator Grosart: We are not really too far apart. I am merely saying that other clauses do certain things. I am now asking what additional powers have you given the special review committee, and my suggestion is that you have given it none. Let me go a step beyond that and ask you as Minister of Justice—I am not really asking you to interpret the bill, but to explain it—if such a committee decided to go beyond the narrow limit of the power to review, would it not then be taking unto itself a power not under this bill? Why is there this limitation in the word “review”. It is an ordinary word, and it has a very narrow meaning. If someone says that I can review something, it does not mean that I can do anything else but review it, which means to go over it again in my mind, or re-look at it.

Hon. Mr. Turner: Senator, that is a very wide word, when you take two stages of what a committee is going to be able to achieve here. First, there is the enabling power in the statute itself. You brought that up in your speech in the Senate. The enabling power is, of course, subject to the scrutiny of Parliament because Parliament has to approve that enabling power in the statute itself. I want to suggest to you that I think in the past Parliament has overlooked the breadth of enabling powers.

Senator Grosart: I agree.

Hon. Mr. Turner: Part of the recommendations of the MacGuigan Report, which the President of the Privy Council and I will implement, if, as and when this bill receives your approval, is to set forth some criteria for the drafting of bills which will allow the Department of Justice to recommend, with cabinet backing and with the moral support of this committee and the legislative support of this bill, the setting of criteria under which enabling clauses will have to qualify. That is the first stage.

Senator Grosart: I was going to ask you about those criteria as well. On whom will they be binding? Will you include that in your statement?

Hon. Mr. Turner: On whom will the criteria be binding? They will be cabinet directives presumably binding on the Government, but they will give me as Minister of Justice a little more leverage over my colleagues than I now have in the width and breadth of those enabling powers.

Senator Grosart: Those are dangerous words in this particular climate. You are speaking of more leverage over your colleagues in the cabinet.

Hon. Mr. Turner: I will exercise that leverage to restrain the breadth of enabling powers, thereby restraining the breadth of ministerial discretion, or administrative discretion, under those powers. I think that you and I are at one there, senator. You want me to have that power.

Senator Grosart: I am quite sure you will, Mr. Minister. Not only am I quite sure you will but I am also quite sure you will stay in the cabinet.

Hon. Mr. Turner: I want to take you to the second stage, once we have the statute—and you have had a crack at the statute because you follow these things very carefully when they come through the Senate. How wide is that enabling power? All right; we get the regulations. To begin with the regulations will be subject to inspection, registration and publication, except for the exemptions, and you will want to deal with that later, perhaps. Then they will be subject to referral.

Now, what does review mean? It means that, against the criteria in the bill and the criteria established by the committee and your own criteria that you set forth in your earlier deliberations when you looked at the Manitoba situation and the British situation, the committee will measure those regulations which it examines. And if the committee feels that those criteria have not been met, it will draw that to the attention of the minister concerned, and will obviously have the power to ask the minister or the officials of the department concerned to attend, and if satisfaction is not given, if the regulation is not amended, the committee reports to Parliament and the report can be debated. The issue of the report can become a matter of confidence by way of a motion. I do not have to suggest to senators how wide the privileges of this house and of the House of Commons are to bring a matter before the executive.

So the full plenary powers of the legislature will be available within that term "review". That is not window dressing. That is a legislative counterbalance against executive power.

Senator Grosart: I am delighted to have your answer, which I take to be, Mr. Minister, that the word "review" is to be interpreted in its widest sense and the omission of such words as "and report" is not intended to be restrictive in any way.

Hon. Mr. Turner: No, it was not intended to be restrictive because we did not want to restrict the privileges of either house.

Senator Prowse: Would it help to have the words "and report" in there?

Hon. Mr. Turner: No. I think it would bind your hands.

Senator Prowse: The way it is now we can take anything we do not like and bring it to the public attention and give it all the publicity available to either of the houses of Parliament.

Hon. Mr. Turner: Which is the best weapon you have, aside from the confidence motion.

But with respect to publicity, Senator Grosart, you are not one to suggest to me that publicity is not a good weapon.

Senator Grosart: I will merely suggest, Mr. Minister, that it is not always as effective as the publicists would wish it to be.

The Deputy Chairman: If there are no further questions on that point, perhaps we could proceed.

Hon. Mr. Turner: I will go on to No. 5. The powers given to the Governor in Council to exempt regulations and other statutory instruments from the application of any provisions of the bill are very narrowly defined. At the present time there is no restriction placed on the Governor in Council in the exercise of his power to exempt regulations from the application of the Regulations Act. It is open to the Government and it is open to the cabinet today to exempt any regulations from the provisions of the present Regulations Act in terms of referral, publication in the *Canada Gazette*, or what have you.

Finally, Members of Parliament—and this may be a mixed blessing—will receive a copy of every regulation that is published in the *Canada Gazette*. If ever there was a reason for extra office space that is going to be it.

Mr. Chairman, I do not really have anything to say by way of further statement. It is obvious from the way the bill was debated in the Senate on all sides that the Senate has a great interest in what we are trying to achieve here. As you have pointed out, there was considerable debate prior to the introduction of the bill.

Senator Grosart: One of the main differences between the bill and the recommendations of the MacGuigan committee is the extension of the limitations on the matters that are exempt.

The MacGuigan committee recommended that the only exempt or secret area, if you like, should be national security. The bill extended that to include federal-provincial matters and international matters.

We have had a pretty good explanation as to why that was deemed necessary, but I would ask you, Mr. Minister, if that is not opening the door pretty wide, particularly in view of the fact that it does not seem clear in the bill just who will decide when national security, international affairs and federal-provincial matters are criteria that should be applied.

The Deputy Chairman: Under clause 27 of the bill, the Governor in Council will determine that.

Senator Grosart: It looks to me as though this gives discretion to departments to say, "Oh, this comes under

federal-provincial affairs and therefore the act does not apply to it."

Hon. Mr. Turner: Mr. Chairman, in answer to Senator Grosart's question, he is perfectly right that the exemptions, under clause 27(d) of the bill, are international relations, national defence security, or federal-provincial relations. There are certain other exemptions where the result of publication would result in injustice or undue hardship to any person or body affected thereby, or where the number was so overwhelming that it would be a burdensome expense on the Crown.

Let us deal with the latter. We found in reviewing this bill in Cabinet that there were certain types of regulations or statutory instruments that related to individuals—a parole is a statutory instrument as is a pardon or a remission of a criminal record—and obviously it is in the interests of the person concerned that these should be private documents insofar as it is possible to have them remain private because they involve individual rights. The knowledge of an exemption from a criminal record, or a pardon, or the knowledge that an individual was on parole would be prejudicial to his ability to rehabilitate himself in society. So those are going to be very narrowly construed and very narrowly restrained.

There are some types of regulations that are so bulky that they have to be exempted. There are 2,500 Orders of the Day issued each week by the Department of National Defence alone. There is nothing highly secret about most of them, but they are much too bulky to deal with. So we get down to the nitty-gritty of international relations, national defence and security, or federal-provincial relations. I think the MacGuigan committee recommended national security only. There is not much difference between national security and defence; it is defined as national defence and security and it is going to be interpreted that restrictively.

So we are left with international relations and federal-provincial relations. We feel that the government has to have an exempting power which it will not invariably exercise, but which it will have the privilege of exercising to exempt documents from inspection and publication where the revelation of those documents might well prejudice international relations or Canada's foreign policy. In terms of federal-provincial relations, particularly in the case of documents that might relate to current negotiations, or that might involve issues that have to be resolved by the agreement of all provinces or where one would want to wait until the matter was successfully or unsuccessfully concluded, the government felt it should have that exempting power.

I want to say at this stage that all the regulations made under the Statutory Instruments bill will be referred to whatever form of scrutiny committee is established and the criteria for exemptions have to be set forth in the regulations under this bill, and those criteria for exemptions will be a public document and will be reviewable by the scrutiny committee, and it will be open to the Senate committee or to the joint committee to review the criteria for exemptions within the meaning of this bill, and to take issue with them. If the members of the

scrutiny committee are not satisfied with the particular exemption, they may require the attendance of witnesses directly concerned and ask for, and obtain, it is to be hoped, a satisfactory explanation.

At the moment we anticipate that the Statutory Instrument regulations, the regulations promulgated pursuant to this bill, will provide no exemptions for regulations dealing with federal-provincial relations. And in the area of international relations, the only regulations proposed to be exempted at the moment are those relating to international security.

Senator Benidickson: How do you relate that to current negotiations, which I think was your term?

Hon. Mr. Turner: During the current negotiations we have not had to promulgate a statutory instrument. In the current constitutional negotiations there would not be any documents that would come under this bill in any event.

So, honourable senators, in summary I want to say to you that the exemption regulations would have to be published pursuant to this bill and would have to be sent to the scrutiny committee, and the general criteria for exemptions can be challenged by this committee.

Senator Grosart: Mr. Minister, it is all very well to speak about the criteria, which is a generic term, but this committee, as I understand it, will now know that a specific document is exempt. Let me give you an example, and a very interesting one, of what I mean. In the negotiations leading to the recognition of the People's Republic of China—and here let me make it clear that I am not taking sides on this matter—and the question of what obligation we might have undertaken or refused to undertake in respect of former commitments to the government in Taiwan, I have not been able to find out what has happened. I have asked a question in the Senate but I have not yet had a reply although, no doubt, one will be forthcoming. But there is a reference in an official publication by the Department of External Affairs to an undertaking given to the representatives of the People's Republic of China that we would sever all official diplomatic relations with Taiwan. Now, is it a document? Is it a secret document? I would like to know but I have not been able to find out. Now, let us say that there had not been what I think was a slip of somebody's pen in letting us know that this undertaking had been given, how would we know that such a document existed? We are talking about delegated legislative powers, not about the papers that go back and forth, the position papers and so on. I think perhaps in exempting this whole area of international affairs, we forget that we are dealing with delegated legislative power. Now if the government assumes by Order in Council a legislative authority in respect to an international obligation, then I suggest we should know about it, and the government should not have the power to exempt that document from public scrutiny or the scrutiny of this committee.

The same thing applies in federal-provincial affairs. I do not think we need any secret legislative instruments or statutory instruments. Again I am not talking about

papers that are necessarily confidential, but rather respecting what this bill is about—delegated legislation. Why should the government take unto itself the authority to keep statutory instruments in those two fields exempt from public scrutiny, contrary to the recommendation of the MacGuigan Commission which looked at this very carefully? My own view is that the MacGuigan Commission was right in saying that you should only limit this to national security which would include defence. That is my question, and remember I am trying to make this a better bill.

Hon. Mr. Turner: I know that, and your arguments are valid arguments which, if I were sitting in your position, I too would make them, not as well as you did, but I would make them. Now when you talk about legislative authority—and you are technically right, if I may say so, in using the term legislative authority—I think we have to distinguish in dealing with international relations and even in dealing with federal-provincial relations between legislative authority properly defined, either by way of a bill or an act of Parliament, and a regulation or statutory instrument passed pursuant to an act of Parliament, and that type of authority which derives from the prerogative of the Crown, since the prerogative of the Crown, after all, still applies in international treaties. The Government of Canada can conclude a treaty—the Columbia River Treaty, for instance—with any foreign power on its prerogative with no obligation for ratification by Parliament. It usually submits the treaty to Parliament by way of courtesy, and it can be raised as a matter of confidence by Parliament, but the treaty strictly speaking could not be amended by Parliament. This is the prerogative.

Senator Benidickson: What about the point of money?

Hon. Mr. Turner: It is only when legislation is necessary, either to substantiate a drain on the *fiscus* as a result of that treaty, or to construct works in respect of that treaty, or when provincial co-operation is needed within areas of provincial jurisdiction, that you may need provincial legislation or federal legislation as the case may be. Aside from that, international relations is primarily a matter traditionally of prerogative, and Parliament's role is not to impose its will on the executive with regard to the negotiation of the treaty or the drafting of the treaty, but is limited under the general matter of confidence, as to whether the treaty is or is not a good thing; and governments have been defeated on that.

We are speaking here of the prerogative power, which is a diminishing power because statutes from time to time are limiting the scope of the prerogative in international affairs and other matters.

Federal-provincial relations, except in so far as they may fall within the terms of the British North America Act, also fall partially within the prerogative power. There is always a weakness in any exempting procedure. Exemptions on matters of security are valid only if from time to time what is being exempted is unknown. That is the risk, and there is no way I can answer you. It is one of those occasions when the legislature has to assume good faith in the executive. You may consider from time

to time that it is an unjustifiable faith, but it is there nevertheless.

Senator Grosart: The reason that I asked the question was because...

Hon. Mr. Turner: I cannot give you a complete answer.

Senator Grosart: Let me take the matter of prerogative a little further. It is true that legally—perhaps not under the developing conventions of the constitution any more—the prerogative can be exercised in relation to the actual signing of an international treaty. What concerns me is that there could be a secret treaty, and under the prerogative there is no way in the world to stop it. That has already caused enough trouble in the world without inviting any more. There could be orders in council or statutory instruments issued to give effect to the exercise of the prerogative, and we would know nothing about it.

Hon. Mr. Turner: It has been pointed out to me that if the treaty were not ratified or consolidated by act of Parliament, because of legislative approval being necessary, the order in council would not be a statutory instrument within the definition of the bill, anyway.

Senator Grosart: But it would be an order in council?

Hon. Mr. Turner: Yes.

Senator Grosart: Then are you suggesting that any such order in council would not come under the bill, that the Government would not even have to consider whether this bill in any way applied to an order in council—which was a statutory instrument, having legislative effect, affecting Canadians—that it was completely exempt by this bill?

Hon. Mr. Turner: You are using the term “legislative effect” in an ambiguous way. If it had legislative effect, and affected Canadians, it would have to be implemented by legislation.

Senator Grosart: No. There are hundreds of orders in council not implemented by legislation.

Hon. Mr. Turner: A treaty does not bind the lives of Canadians unless there is some legislative...

Senator Cook: But there has to be legislative authority in order to make an order in council, does there not?

Senator Grosart: No.

Senator Cook: Under what authority are they made?

Senator Grosart: Under the prerogative. Under the Crown's prerogative a treaty can be implemented by order in council.

Senator Cook: I thought that an order in council had to be made pursuant to a statute.

Senator Grosart: No, it does not.

Senator Prowse: Under section 27 we are setting out where the Government or the Cabinet undertakes.

Senator Cook: But the Government has no power unless it is a statutory power.

Hon. Mr. Turner: I am trying to suggest the difference between prerogative and legislative power. Senator Benidickson pointed out that if any treaty is to have legislative effect, within your meaning of the term, then there must be legislation to justify it. If there is legislation to justify it, it becomes a public matter, and you then make an order in council, and only then.

Senator Prowse: Under section 27 you are going to spell out the basis on which you can operate without submitting for examination; is that correct?

Hon. Mr. Turner: That is correct.

Senator Prowse: The moment that anybody finds out that something has been done which they think is a breach of that, then we have all the procedures of our committees and everything else, the question period in the house, and the votes, in order to bring it to the attention of the public, and take an appeal to them. Is that so?

Hon. Mr. Turner: That is so.

Senator Grosart: I hope the minister will examine this interesting proposition, that every order in council must have statutory authority. It is an interesting suggestion, but I suggest to the minister that there is not an iota of validity in the statement. Let us examine what is an order in council. An order in council is a decision of the Cabinet expressed in a statutory instrument. I suggest there is nothing in our constitutional law that necessarily relates an executive act of the council to a statute.

Senator Prowse: Until section 27.

Senator Cook: The council has no authority at all unless it is pursuant to a statute.

Senator Prowse: Section 27 provides some limitations on that.

Hon. Mr. Turner: I suggest that when I use the word "criteria" I am not going far enough. The statutory instrument regulations, pursuant to this bill, will set forth not the criteria for these exemptions but the types of instruments that will be exempted. In other words, it will be even more precisely set out for the benefit of the scrutiny committee.

Senator Prowse: It will set out the basis on which exemptions can be justified; is that correct?

Hon. Mr. Turner: That is correct.

Senator Grosart: Then I have a good deal of sympathy for the draftsman to whom you give the job. He has a tough task if he has to describe every kind of instrument on which the Government will impose this self-discipline.

Hon. Mr. Turner: He is up to the job, senator. As a matter of fact, as a result of this bill being introduced and the Government's accepting the policy of the Senate

and of the MacGuigan committee, Mr. Beseau, who was for two years in the Privy Council Office representing the Department of Justice, is now back in the Legislation Section of the department. He has been replaced by three or four people—first, because we believe that Mr. Beseau is worth three or four people, and, secondly, because the amount of verification necessary as a result of this bill gives the Department of Justice four times as much scrutiny authority, and I believe is giving the Senate and the House of Commons almost limitless authority over these regulations.

Senator Grosart: We may be holding you to that word "limitless" in due course.

Hon. Mr. Turner: I said almost limitless.

Senator Grosart: Mr. Minister, the definition of "statutory instrument" in clause 2 (1)(d) seems to be very wide. It includes such things as tariff of costs or fees, commissions, warrants, proclamations, by-laws and resolutions. This is one case where it seems to me that the drafting goes a little far, for example in tariff of costs or fees. I parked my car in a garage operated by the federal Government where there is a tariff of fees. If you lose your ticket you are liable for the maximum cost, which happened to me. Would this "tariff of fees" be a statutory instrument under this bill.

Hon. Mr. Turner: I would ask Mr. Beseau to answer Senator Grosart's personal problem.

Mr. P. D. Beseau, Legislation Section, Department of Justice: If I am not mistaken, senator, that tariff of fees is established under the Government Property Traffic Act by way of regulations. Therefore I presume the provision is included there, saying that if you lose your ticket you are liable for the full day's payment.

Senator Grosart: I think the garage operator put this up, for his own convenience because it is an administrative matter. That is why I questioned the extensiveness of this. Will you really police it this far?

Mr. Beseau: If these are regulations, of course, they will be examined. Statutory instruments will not be examined. There will not be that much policing of it by the Privy Council office or the Department of Justice. That is where it is envisaged that the scrutiny committee will be able to say if you are operating by virtue of this statutory instrument—if you have made this pursuant to a statute of Parliament—we want to look at it and see exactly what you have done.

Senator Grosart: So if it happens to me again and I can discover that this tariff or fees was not reviewed by a committee of Parliament, then I can have my money refunded.

Hon. Mr. Turner: He did not say that, senator. The failure to have brought a regulation to the scrutiny committee, although that may have involved a parliamentary sanction, does not by the bill invalidate the fee.

Senator Grosart: Oh, yes; I had forgotten you have given yourselves that other out.

Hon. Mr. Turner: Yes, otherwise every statutory regulation would be in suspense.

Senator Grosart: Yes, and a good thing too. It has occurred to some of us here from time to time that there is something a little bit absurd in passing a bill which says the Governor in Council shall have authority to make regulations when we do not know what the regulations are. Very often the regulations that are going to be promulgated are more important in understanding the scope of the bill than the bill itself.

Would it make sense if Parliament were to indicate it was not going to pass any of these bills until they had seen the regulations? I know the first answer is, of course, that you cannot draft the regulations until the act is passed. This, of course, would only be window dressing. Obviously you have to know what you want in the regulations before you can draft the bill. The draftsmen may deny that, but it seems obvious to me that that is the fact.

Now, would it not make sense if Parliament required that it see the regulations in order to really understand what you want to do under a bill?

Hon. Mr. Turner: I suppose that has happened from time to time, senator.

Senator Grosart: I do not think it ever has; I have tried to find out.

Hon. Mr. Turner: One of the reasons for making regulations rather than including them in the statute itself is to provide the flexibility needed because of the unpredictability of the situations which may have to be met. If the facts are precisely enough known at the time the bill is brought in it would be preferable to include those provisions in the statute. The flexibility gained by the regulations is needed because of the lack of predictability. It is often impossible for a minister to explain to Parliament at the time what the regulations will be.

Senator Cook: Would it not also take much more legislative time to have the regulations in the statute?

Senator Grosart: I am only speaking of the initial regulations, which do indicate the scope of the act. We have had some very weird ones; we have had a bill here known as the Canada Deposit Insurance Act, which actually said that the definition of "deposit" would be left to the by-laws of the company. In other words, they could say "deposit" means supermarkets and this bill would bring supermarkets under a deposit insurance bill by regulation. This kind of thing happens then quite often.

Hon. Mr. Turner: Your immediate recourse there would be to attack the enabling power as being too wide, rather than regulations to be passed pursuant to it. I do not wish to be lured into a trap; I do not know what bills are before the Senate at the moment.

Senator Grosart: If there is a trap, Mr. Minister, I can assure you that it is a tender trap.

Senator Belisle: Mr. Chairman, knowing that Senator Grosart has the ability to ask intelligent and technical

questions for a long time and knowing that the minister has been very kind, but precise, in his answers, I move that the bill be reported without amendment.

Senator Grosart: The guillotine is one thing from the enemy, but when it is from your friends...

Hon. Mr. Turner: You must be used to that, senator.

The Deputy Chairman: Honourable senators, is it agreed that Bill C-182 be reported without amendment?

Hon. Senators: Agreed.

The Deputy Chairman: On behalf of the members of the Standing Senate Committee on Legal and Constitutional Affairs once again I wish to thank you, Mr. Turner, for coming over before our committee and making such a brilliant presentation on the provisions of Bill C-182. The deft way in which you answered the questions put by members of the committee certainly substantiates once again that you do your homework well, and that you are thoroughly familiar with all the provisions of legislation that you present to Parliament.

Senator Choquette: You mean that *Maclean's* magazine is absolutely correct.

Hon. Mr. Turner: I am prompted by what Senator Choquette's remark to say that I appreciate, once again, the courtesy of the committee. I wish to say that the Senate, historically and certainly within the last three or four years, has taken a deep interest in this subject. I think the Senate appreciates what an important piece of legislation this can be for the Canadian people and for Parliament. I would think that the role of the Senate could well be enhanced by the establishment of such a committee, and I would hope that the Government Leader and leaders of the parties would discuss with the other place the possibility of a joint committee. I say that without in any way presuming as to how you may wish to handle it. In any event, I think this is, if I may say so with respect, a very useful function for the Senate of Canada.

The Deputy Chairman: We certainly appreciate your remarks, Mr. Turner. Thank you for appearing. We look forward to having you appear before us on future occasions.

Hon. Mr. Turner: May I recognize, with the courtesy of your permission, the fact that my Parliamentary Secretary, Mr. Béchard from Bonaventure, has appeared with me today.

The Deputy Chairman: Honourable senators, the third and last item on our agenda is the motion of Senator Hastings regarding the Criminal Records Act. Senator Hastings, since you are a member of this committee, would you like to address the committee on what you have in mind, and how you intend to go about this investigation?

Senator Hastings: Mr. Chairman, as I said in the Senate, from the facts that have been brought to my attention by various people affected by the act it is my

opinion that the intent and purpose of the act is being completely defeated by the administration's use of the Royal Canadian Mounted Police to carry out the investigative procedures of the act. I think it is unnecessary and repugnant to use a peace-keeping force to investigate the lives of these people. I have been unsuccessful in my efforts with those concerned to have the administrative changes made, so I have brought it to the attention of this committee as my only recourse. I hope the committee will undertake to inquire into the administration of this act, and particularly the investigative procedures, by calling witnesses from the department, interested organizations who are in agreement with me, and those concerned.

The Deputy Chairman: From the RCMP as well?

Senator Hastings: From the RCMP, certainly.

The Deputy Chairman: And from the National Parole Board perhaps?

Senator Hastings: We could then inquire into this matter and, if it is seen fit, make recommendations accordingly.

Senator Cook: It seems to me that if we follow that procedure, which is a very good idea, the first thing to do would be to call some senior officers of the RCMP to hear their side of the story, and carry on from there. I think it is a good idea, and I think we should start with the RCMP.

The Deputy Chairman: Honourable senators, what are your views on whether this should be done by the whole committee, or whether we should set up a subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs to deal with the matter?

Senator Prowse: Mr. Chairman, I move that we set up a subcommittee consisting of five persons, with Senator Hastings as chairman. The responsibility of determining who the other four members of the committee should be could be worked out in conversation between yourself and, Senator Hastings. When you are in a position to recommend the names, we could have a meeting of the whole committee to confirm that subcommittee, which could then carry out this investigation.

Senator Cook: What is the virtue of having a subcommittee?

Senator Prowse: Because they would have a great-deal of work to do, which might tie up the committee and prevent it doing other things of importance.

Senator Belisle: Before we discuss the merits of Senator Prowse's motion, I should like to ask a question. We have been dealing with some very technical problems over the last hour, and this question may not sound too intelligent, but I ask it because I toured the country with the Special Committee of the Senate on Poverty and found that we could not get anywhere. Does the Government favour this committee? Does the Government favour what it is proposed to do?

Senator Prowse: The Government has no concern with it. It is our decision.

Senator Belisle: Let us be practical. Do they want us to do it?

The Deputy Chairman: The Senate referred this matter to the Standing Senate Committee on Legal and Constitutional Affairs, and it is up to us.

Senator Grosart: We are required to report.

The Deputy Chairman: We are required to report back to the Senate.

Senator Belisle: A while ago the Minister of Justice said that we cannot get what we do not see, but we can look for their blessing to be given to us.

The Deputy Chairman: We have power to send for any persons we wish, and Senator Hastings has indicated some of the officials he would like to appear before either the whole committee or a subcommittee.

Senator Belisle: I was in the house the other day when the Leader of the Government said to Senator Hastings, "We should get together." Did Senator Hastings have a meeting with Senator Martin?

Senator Hastings: Yes, I have had a meeting with Senator Martin and with officials of the National Parole Board. That is why I said that I personally got nowhere with my representations, and I therefore appealed to the Senate.

The Deputy Chairman: I think it is immaterial whether the Government or the Government Leader approves of this. We have an order and directive from the Senate, and we are obligated to act on that order and report back to the Senate. Is that not the situation?

Senator Fergusson: Yes.

Senator Prowse: I suggest we set up a subcommittee or a steering committee, but let us do it reasonably quickly.

The Deputy Chairman: That is right.

Senator Prowse: My motion is for the setting up of an ad hoc subcommittee. I suggest that the person who brought up the matter and knows what he is talking about, Senator Hastings, ought properly to be the chairman of that subcommittee, and that he in consultation with the chairman of this committee, after talking to the representatives of the various parties involved, recommend to us next week the memberships of that subcommittee, which can then start to work.

The Deputy Chairman: Why cannot we set up the subcommittee today while we are all here? It is difficult sometimes to get such a large group together. It might be simpler to set up our subcommittee right now, and to name the chairman of that subcommittee.

Senator Burchill: I presume that the Department of Justice administers the Criminal Records Act.

Senator Hastings: No, the Solicitor General.

Senator Macdonald: This committee was authorized by the Senate to do these things? Can we in turn delegate that responsibility to a subcommittee?

Mr. Hopkins: You cannot delegate responsibility, but you can delegate the doing of the work.

Senator Fergusson: Yes, we did it for years in the divorce committee.

The Deputy Chairman: The subcommittee reports back to the main committee with a recommendation, and the main committee makes its own recommendation to the Senate.

Senator Grosart: Mr. Chairman, before you put the motion, one of the questions which arises in my mind is whether it is fair to ask Senator Hastings to be the chairman of that subcommittee. He has really brought certain accusations against those in charge of these records. I wonder if we are not making him judge and jury.

The Deputy Chairman: He can be a member of the subcommittee.

Senator Grosart: Certainly, he can be a member. This is just a thought.

Mr. Hopkins: The usual course is for a subcommittee to be named and then it selects its own chairman.

Senator Grosart: Yes, but it is not necessarily so. This committee has the power to appoint the subcommittee chairman.

The Deputy Chairman: We can name the chairman of the subcommittee.

Senator Prowse: This is not really very serious. No one is buying or selling Crown lands; we are merely setting up a subcommittee to do some investigative work, which I am sure the whole committee has not the time to be concerned about because it has other responsibilities. I suggested that Senator Hastings be the chairman because he has some basic information about this matter that the rest of us do not have. It is as simple as that.

Senator Grosart: He has also brought some accusations against public servants. I would like to see him freer than he would be if he were chairman.

The Deputy Chairman: Senator Hastings agrees with Senator Grosart's idea.

Senator Grosart: He would be very circumscribed if he were chairman.

The Deputy Chairman: The subcommittee will consist of Senators Hastings, Prowse, Choquette, Bélisle and McGrand. The subcommittee will elect their own chairman, there will be a quorum of three, and they will report to this committee in due course. The subcommittee can take all the time they need.

Hon. Senators: Agreed.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

(Sub-committee examining Criminal Records Act)

The Honourable A. W. ROEBUCK, Chairman

The Honourable E. W. URQUHART, Deputy Chairman

No. 8

TUESDAY, JUNE 1, 1971

First Proceedings of the Sub-committee examining the
"Criminal Records Act"

(Witnesses and Appendix—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hayden
Bélisle	Hollett
Burchill	Lang
Casgrain	Langlois
Choquette	Macdonald (<i>Cape</i>
Connolly (<i>Ottawa West</i>)	<i>Breton</i>)
Cook	*Martin
Croll	McGrand
Eudes	Méthot
Everett	Petten
Fergusson	Prowse
*Flynn	Roebuck
Gouin	Urquhart
Grosart	Walker
Haig	White
Hastings	Willis

**Ex officio Member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 28, 1971:

The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Hastings resumed the debate on the motion of the Honourable Senator Hastings, seconded by the Honourable Senator Prowse:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the operation and administration of the *Criminal Records Act*, chapter 40 of the statutes of 1969-70, and in particular upon the operation and administration of subsection (2) of section 4 thereof.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative, on division.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, June 1, 1971.

(9)

Pursuant to adjournment and notice the Sub-committee examining the Criminal Records Act (Legal and Constitutional Affairs Committee) met this day at 3.30 p.m.

Present: The Honourable Senators McGrand (*Chairman*), Belisle, Hastings and Prowse—(4).

Also present but not members of the Sub-committee: The Honourable Senators Casgrain, Croll and Eudes—(3).

The Sub-committee proceeded to the consideration of the following Motion by the Senate:

“That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the operation and administration of the *Criminal Records Act*, chapter 40 of the statutes of 1969-70, and in particular upon the operation and administration of subsection (2) of section 4 thereof.”

The following witnesses were heard in explanation of the Motion:

The Hon. J.-P. Goyer,
Solicitor General of Canada;

Mr. T. G. Street, Q.C., Chairman,
National Parole Board;

Mr. W. L. Higgitt, Commissioner,
Royal Canadian Mounted Police;

Mr. L. L. England, Chief,
Clemency and Legal Division,
National Parole Board.

On Motion of the Honourable Senator Hastings, it was Resolved to print 800 copies in English and 300 copies in French of these proceedings.

On Motion duly put, it was Resolved that the brief headed “Brief-Inquiry-Criminal Records Act”, provided by the Solicitor General, be printed as an appendix to these proceedings.

At 5.40 p.m. the Sub-committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
*Clerk of the Sub-committee
examining the Criminal Records Act,
Legal and Constitutional Affairs
Committee.*

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, June 1, 1971

The subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs, to which was referred an inquiry into the administration of the Criminal Records Act, met this day at 3.30 p.m.

Senator Fred A. McGrand (*Subcommittee Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us as our witnesses the Honourable Jean-Pierre Goyer, Solicitor General of Canada, Commissioner W. L. Higgitt of the Royal Canadian Mounted Police, Mr. T. G. Street of the National Parole Board, and Mr. L. L. England of the Department of the Solicitor General.

Mr. Goyer, do you wish to make an opening statement?

Senator Hastings: Mr. Chairman, at our previous meeting it was decided that we would not print the proceedings of this meeting. Since that time, there has been shown a great deal of interest both inside and outside the Government service in our work. With that in mind, I would move that we print the usual number of copies, in English and French, of the proceedings of this subcommittee.

Senator Prowse: Mr. Chairman, I think that that would have to be moved in the full committee. I do not think that a subcommittee has a right to order printing.

Senator Croll: We can move the motion here.

Senator Prowse: Then it has to be confirmed.

The Chairman: We are just rescinding what was moved the other day. Is that agreed?

Hon. Senators: Agreed.

[*Translation*]

The Honourable Jean-Pierre Goyer, Solicitor General of Canada: Mr. Chairman, may I first of all say that it gives me great pleasure to appear before your committee to answer the specific questions that have been raised, namely, the way in which the inquiry is to be conducted by the Board in the case of a Canadian citizen who requests that his criminal record be erased and that he be granted a pardon.

First may I remind you of subsection 2 of section 4 of the Criminal Records Act, and I quote:

The Board shall cause proper inquiries to be made in order to ascertain the behaviour of the applicant since the date of his conviction,...

Therefore, this means that at the outset, it is necessarily up to the Board itself to set the criteria in such a way that it can be satisfied with the inquiry, which must be conducted in accordance with the terms of the Act. It might happen, in view of the fact that the Board must submit its recommendation to the Cabinet, when such recommendation is positive, it might happen that even the Cabinet may ask to be better informed on the applicant's record. This means, I think, that what interests us to begin with is to find out whether we are satisfied with the way in which the inquiry is being conducted, and that it will be up to us to consider whether our reasons are valid.

First, may I say that it is not my intention to answer all your questions dealing with the technical aspect of this matter; this is why Mr. Street and Mr. Higgitt have accompanied me; they will be able to provide you with more information on the technical aspects.

As for the policy itself, I shall first say that the fact that the inquiry is conducted by the Royal Canadian Mounted Police, in the cases that concern us, has raised no particular problem to date. Until now, I am informed that the RCMP has made about 480 investigations which have been requested by the Parole Board, and no one has found it necessary to complain about the way in which the RCMP conducted the investigation. This does not mean that, in future, there will not be individuals who may raise objections about the way in which the investigation is conducted, but anyway, the fact that 480 investigations have taken place in a single year and no one has had to complain augurs well for the future.

Moreover, a practical advantage of the fact that the RCMP is conducting the investigations stems from the fact that the Force conducts a number of investigations in various fields and when the RCMP contact other citizens and ask questions about a citizen's behaviour, the citizen being questioned cannot know exactly why the RCMP is investigating. There may be various reasons for it. Certainly, it may be a criminal investigation, but it may also be merely because the individual is seeking employment with a government agency or department or a Crown Corporation and they want to find out exactly what his behaviour is like for security reasons, for example, or it may simply be for inquiries which may, in eight out of ten provinces, deal with aspects such as obser-

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vance of the Highway Code, for example, or it may simply be that individuals are questioned in relation to the Criminal Records Act specifically. Therefore, the RCMP has a wide range of possible reasons for conducting investigations. We believe that this is a positive aspect of the fact that the RCMP conducts the investigation. If we had to entrust this investigation to a particular agency, such as the Parole Service, for example, then, of course, the person questioning citizens would automatically have to disclose the fact that this was being done with a view to erasing a criminal record since that would be his one and only reason for investigating. Whereas, I repeat, in the case of the RCMP, there may be a variety of reasons.

I am informed—and you might question the Commissioner in this connection—I am informed that when, during an investigation, a citizen becomes too insistent on knowing why the RCMP are making an investigation, then, instead of disclosing the basic reason, an attempt is made to sidestep the question, and if this is not possible, they simply suspend the questioning of that person. In short, they are not inclined to be very talkative; on the contrary, they are inclined to be very discreet in the way the investigation is conducted. Furthermore, by calling on the RCMP, we are calling on a professional police force which, of necessity, is very skilled in conducting investigations, and does so in the most professional way possible.

Of course, if really necessary, it would be possible to train personnel who would perhaps become as professional as the RCMP in conducting investigations, within another government agency. But it still remains to be seen whether we would achieve these results as quickly without hurting the reputation of the applicants; secondly, we would not be setting up a second structure, another governmental superstructure, when it seems that up until now the RCMP have been providing services that are entirely satisfactory to the Parole Board.

There might be other reasons, Mr. Chairman; perhaps, during the course of the questions which may be raised by the Honourable Senators, we might disclose others. Moreover, I think that basically it is a practical reason that prompts us to retain the present practice; this does not mean that the present practice excludes all others. As a matter of fact—the Act makes it clear—the Board could ask police forces other than the RCMP, and in fact it does so—it may ask provincial and municipal police forces for additional information. Also, I am informed that the Board does not ask the RCMP for a full investigation in each case.

The Board merely asks for an investigation on specific questions on which it would like to be better informed. The Board could very well use the services of the Parole Service in some cases, for example, and I imagine that this will be the growing practice, in cases where a person has been granted conditional release, that if that person—after two years in the case of a summary conviction—that if that person applies for a pardon, his file might be reactivated in the Parole Service, which might use almost the same contacts as when a person has been unconditionally released, for example, two years previ-

ously. This means that it is a source of information which might be very valid and which might be used more and more.

In short, it is flexibility that guides us, simply to be able to achieve our goals in as practical a way as possible, without, naturally, harming individual reputations, and without having to create or set up another government structure, which would appear to us to be a major expenditure under the circumstances and which may, which might be avoided while still achieving our hoped-for goals.

The Chairman: We have heard the statement of the minister. Senator Hastings, would you care to ask any questions?

Senator Hastings: My first words must be in appreciation of the minister and his officials. Perhaps Mr. Street could answer my first question. Could we have a run-down on the number of applications for pardon that are on record?

Mr. T. G. Street, O.C., Chairman, National Parole Board: Do you want that figure for the last year?

Senator Hastings: Whatever is the latest reporting date.

Senator Prowse: Whatever figures you have. We would like the number of applications, and the disposition.

Senator Hastings: While Mr. Street is looking for those figures, perhaps I could ask another question. On reading the record of the committee hearings held last year I noticed there was a good deal of concern over the investigative portion of the act. At that time the committee asked that the act be amended from the word "shall" to the word "may". At the time both the minister and the committee agreed to the amendment, but for some reason it did not appear in the final drafting. Can you make any comment as to what happened?

Mr. Street: I never heard of the discussion or of the significance of the two words. It simply says that the board shall cause proper inquiries to be made. We would interpret the word "may" to mean in the sense that it depends on what is a proper inquiry. If we knew nothing about a person we would have to ask the police to provide us with a report. On the other hand, if there are any well-known references concerning the person we would not require much of a report and we would consider the information we have as being sufficient inquiry.

I do not think we would have any objection to either the word "shall" or "may". It depends on what the board considers is proper. If we know nothing about a person we make a detailed investigation. On the other hand, if we know a good deal about him we need not make such a detailed investigation.

Senator Hastings: But how extensive an investigation would be carried out?

Mr. Street: If it were a well-known person we could get almost all the information we require from *Who's Who*.

Senator Hastings: The board or its officials would make that decision.

Mr. Street: It is not always necessary to have the police make inquiries about a person who is well known. We seldom get requests concerning people who are well known. When I was before the Justice Committee recently I mentioned the case of a man who had been convicted 30 years ago involving the selling of tires. That man was now head of a company and his company wanted to send him to the United States. The fact that he was head of his company and that the company was sending him to the United States was all that we needed to know about him. We did not need to make an investigation in his case, particularly as the offence occurred a long time ago.

Senator Hastings: You and the board made that decision? Can you not extend the same courtesy to Mr. John Smith, a plumber in Calgary? Can your board not make a decision as to whether an extensive investigation by the police is necessary by interviewing the man? This is my exact argument, that you or employees of your board are quite capable of making the decision as to the extent of the investigation and whether to involve the Royal Canadian Mounted Police. This should be available to all citizens, not only those who are prominent.

Mr. Street: As the act reads, it is for the board to decide on the inquiry. If a man is well enough known there is no need for an extensive inquiry. Applicants are also invited to present letters of reference. The application form lists suitable persons, such as Members of Parliament, judges and other prominent people.

Senator Hastings: Is that courtesy extended to every applicant who appears before your officers when they decide whether to extend the investigation to involve the police?

Mr. Street: We have never considered doing it just like that. It would extend the procedure appreciably. Thirty-five officers, to whom applicants are referred, are stationed throughout the country. They can present themselves and offer information, but I do not think it has ever happened.

Senator Belisle: Do I understand you correctly when you say that you could do that? In other words, do you have the power to make these investigations without calling on the RCMP?

Mr. Street: Yes, because it is for us to decide what is proper. It is difficult to legislate what is proper. The act provides that the board shall cause proper inquiries to be made. In a case such as I mentioned where the man is well known and employed in a large company which wants to transfer him to the United States and a pardon is required we would not have the police chasing around enquiring about him. He could also send letters of reference, upon which we might act.

Senator Hastings: All I submit is that John Smith, the plumber in Calgary, should have the same opportunity of appearing in your office in Calgary, where the investiga-

tion can be completed in one hour. Surely you can accept the recommendation of your own officer as readily as one of the RCMP?

Mr. Street: The offices are open and while applicants are not directed, they can always present themselves and tender whatever information seems to be desirable to support their application.

Senator Casgrain: Are there any women on the parole board?

Mr. Street: Yes, we have a lady on the parole board, Miss M. L. Lynch. She is a senior member. She and I have been members longer than anyone else.

Mr. L. L. England (Clemency and Legal Division National Parole Board): This is under the Criminal Records Act. Under the Royal prerogative of mercy. Any application received before the act was proclaimed we proceeded to consider for a pardon under the Royal prerogative of mercy. The effect was the same, but it was not referred to the board in the same way that those under the Act are. There were 52 pardons given in that eleven recommended. The Solicitor General has often pardons granted altogether.

Senator Hastings: Eighty-nine as compared to 75 the year before?

Mr. England: In 1969 there were 120 pardons granted under the prerogative of mercy. In addition, there were eleven recommended. The Solicitor General has often stated that in 1969 there were 131 pardons recommended.

Senator Hastings: How many were granted?

Mr. England: 120 were granted. On December 31 there were 11 with the Governor General which happened to be signed in January. You can take the figure of 120 or 131, as you wish.

Senator Prowse: All those that were recommended were granted eventually.

Mr. England: That is correct. In 1970 we were proceeding under the prerogative of mercy until June 11, 1970. When this act came into force, a decision had to be made as to whether those people who had applied for a pardon under the prerogative of mercy and were told that it would be proceeded with under the prerogative of mercy, should continue to be processed under the prerogative of mercy. The decision taken by the then Solicitor General was that they would continue to be processed, and they were. Fifty-two pardons were granted under the prerogative of mercy in 1970. During that same period we had the new act to contend with. This meant new procedures, and the National Parole Board had to be satisfied with the type of investigation and the submission made to them. The Governor in Council had to be satisfied. There was thus question of processing new applications under the Criminal Records Act.

In June, as soon as it was announced, eleven applications were received, besides the hundreds of inquiries. There was obviously a slow down in the processing of

pardons. In July 37 completed applications were received; in August, 42; in September, 68; in October, 108; November, 78; and in December, 61. Now a flow of Criminal Records Act applications was commencing. In addition, there was the matter of putting a new program into effect. There was a time element there. We are all aware of what happened in Quebec in October, and the investigation of pardons by the R.C.M.P. was delayed. Then, of course, there was a change in the department. A new Solicitor General was appointed. I think it is only fair to say that the new Solicitor General had not had an opportunity to look at the program.

Senator Hastings: Could we have the rundown of the total number of applications received?

Mr. England: Under the Criminal Records Act to date there are 766. These are active files.

Senator Hastings: How many have been granted?

Mr. England: Thirty seven.

Senator Hastings: How many more have been approved by the Board?

Mr. England: In the April statistics there are 58 approved by the Board.

Senator Hastings: How many are under investigation?

Mr. England: Up to May 25 there are 766 under investigation.

Mr. Street: The number is 766 less the 89.

Senator Hastings: All the remainder are under investigation?

Senator Prowse: There are 729 under investigation.

Mr. England: There are 766 presently under investigation. There were 37 pardons granted and they are not under investigation now.

Senator Hastings: How many rejections were there?

Mr. England: Two.

Senator Hastings: You have completed 180 investigations, and you are in the process of denying two?

Mr. England: That is quite right.

Senator Hastings: If there are two out of 180 that you are going to reject, would that not indicate the investigation is not necessary?

Mr. England: All of the people who write in asking about criminal records do not complete investigation forms. There were 766 plus 37 applications for which files were made up and investigations commenced. This does not mean that only 800 people made inquiries. A great number made inquiries. When they make an inquiry we do not make up a file, and I do not call that a matter under investigation. When they inquire we inform them that a thorough investigation is made. We forward to them extracts from the act which state that an investiga-

tion shall be made, and often we do not hear from them again.

Senator Hastings: Why?

Mr. England: Presumably because they do not feel they could stand up to an investigation.

Senator Hastings: I submit to you that you are wrong.

Mr. England: Many know full well that they have been leading a good life and feel that they are entitled to a pardon and they do apply, and the investigation is a positive one.

Senator Prowse: In other words, it is the investigation that scares them, not the results?

Mr. England: It is just supposition. I have no way of knowing why a person does not apply. That could be an explanation.

Senator Hastings: Eighty-eight per cent of the people who have been successfully rehabilitated have done it by covering up a past because society that will not accept them and their attitude towards them. When they are told that there is going to be an investigation into that past, no matter how discreet, that individual will feel that there is a real danger of his past being exposed and all of his progress being lost. He says, "I don't want it, I'll continue as I am." In that respect I suggest we have defeated the act.

Mr. England: How would their past be exposed? What is the basis of your comment?

Senator Hastings: The danger of exposing their past by the investigation.

Mr. England: The investigation is made in respect of the references that the person has given.

Senator Hastings: You are not confined to the references?

Mr. England: Not necessarily.

Senator Prowse: The person making the investigation may speak to a person and inadvertently tell him who he is, what he is doing, and why. For example, if I wanted to buy an insurance policy, they would send out a fellow to see my neighbours, and he would tell them who he was and why he was there. They would tell me he had been there. All of the neighbours would not tell me, but I have had this happen on various occasions. I presume they are experienced with that kind of thing, but the investigator might say, "I am from the RCMP and want to know about John Doe".

Mr. England: Here is a memorandum that we received from one of our offices in Canada. Our district representative had an opportunity of reading the transcript of the radio program that involved Senator Hastings and Mr. Adams and myself on the CBC. A man who received a pardon came into our National Parole Board office, and I quote from this memorandum:

He stated further that he was very pleased with the pardon... I asked him whether he had any feelings about the investigation itself by the police or whether he had been embarrassed in any way at all. On the contrary he stated that he had been quite happy with the whole procedure and any of his friends who had been approached by the R.C.M. Police were under the impression that they were investigating him for a Government job. There was no embarrassment or any inconvenience.

This memorandum is really in relation to the program.

Senator Prowse: It is what we call self-serving hearsay.

Senator Hastings: I think the people who are getting the pardons are those who do not really need them. One man came to me and said that he would welcome an investigation by the Royal Canadian Mounted Police, but in our discussions later it turned out that he had not been gainfully employed for the two years he had been released from custody. It is those people who do not need the pardons who are applying. It is the ones who are completely rehabilitated and who do not have a past to cover up, who are applying for pardons.

The Chairman: When you say they do not need a pardon, what do you mean?

Senator Hastings: Those rehabilitated persons who do not care whether their pasts are exposed or not.

The Chairman: The ones on the border line.

Senator Hastings: They are on the border line or have covered up their past. That is, 88 per cent of those successfully rehabilitated have covered up their past until it is a secret, and they are not coming forward for their pardons because of the danger of being exposed, even to their own families.

Senator Prowse: These are people who have gone to new communities to get new starts.

Mr. Street: You cannot guarantee that he will never be found out. I do not think there is much chance or possibility that the investigation will reveal that the man who is being investigated has a criminal record. The police are very discreet about these things and are trained to be discreet, as you know. I honestly do not think that this has happened. In his remarks someone has told you it happened. I think the chances of that happening are very slim indeed, and I do not see what else we can do.

Senator Hastings: I suggest that you do the same as you do for prominent citizens. Any citizen could enter your office and the board could make its decision.

Senator Prowse: If there is nothing against them on the records anywhere and the R.C.M.P. have nothing in their records, then do not go beyond the records. Why could you not do it that way?

Mr. England: I would say that if we did nothing but check records then, with the greatest respect, the value of the pardon would not mean very much. I think the

real value of the pardon is not that it erases something that happened, but that it indicates he has been very carefully checked out by competent people and found to be deserving of it. Therefore, it has some value.

Mr. Street: If it could be done automatically I would be happy. It would relieve us of 700 or 800 investigations each year. Its real value is knowing that he has been checked out, and found to be a responsible citizen deserving of this special consideration. If it is done automatically it means nothing. All you have to do is have five years of undetected crime, or even two years, and automatically have your record done away with. I do not think that would be doing a favour to people who deserve it.

I think the senator has a point, that the people who really need it just do not bother unless they have to get a visa or something like this. Some people want it for sentimental reasons. The people who have not inquired are the somewhat inadequate people. They do not get along very well, anyway. You find when you check them out that they are drinking all the time, that they beat their wives, have not had a job for more than two or three months. Those are not the kind of people to whom we want to give pardons.

Senator Prowse: That would be on the record somewhere.

Mr. England: His reputation in the community would not be on the police record.

The Chairman: I would like to clarify something in my own mind. You mentioned that the RCMP take charge of this in order to have a proper inquiry. It depends on the purpose of your inquiry as to whether it makes it proper or not. Do the RCMP have details about the behaviour of these people that persons in your employ would not have?

Mr. Street: Do you mean from their own records?

The Chairman: Yes, or their investigations.

Mr. Street: We usually do not have anything. People who apply for pardons usually do not have a record within the last five years, or they would not be applying for a pardon.

The Chairman: When you set out to check on a man applying for a pardon I understand it is done through the RCMP. The question is: Why cannot officials working for your organization do the same thing?

Senator Prowse: Or even people hired publicly.

The Chairman: That is what I meant by "in their employ". Does the RCMP have something in their records, or in their technique of investigation of a person's record, that your people would not have, to make it a more efficient and proper inquiry?

Mr. Street: I should let Commissioner Higgitt answer that question. As the minister said, the advantage of having it done by an RCMP officer is that everyone

knows that they make investigations for various purposes like jobs in the Government, crown corporations, security jobs, and so on. If a parole officer does it, everyone in the community will know he is investigating a pardon or parole. I think I should let Commissioner Higgitt answer the question about special knowledge and what knowledge they do have.

The Chairman: We had better finish Senator Hastings' questions.

Senator Hastings: Mr. Street, you were speaking about the value of the pardon. Would you indicate who would receive the pardon? Would you indicate that you had a pardon?

Mr. Street: That is just it, sir. If I had a pardon in my pocket I would not be telling anyone about it. I would not be anxious to publicize it.

Senator Hastings: The point that I am trying to make is that the pardon that you mail to the man really does not mean a great deal. The great value in the pardon is the psychological knowledge that his record has been sealed.

Mr. Street: I think so, senator, and it enables the person to obtain a visa or bonding. Up to a few years ago we were not giving them that freely, and the American authorities still would not accept them. It did give you a point of argument with the American authorities—a person could say, "I have this pardon and it means I was checked out." It gives them a chance to get a visa where they might otherwise not get it. The only time I think they really need it is when they have to overcome some difficulty. It has a value where a person applies for a job as a police officer. If he has a pardon the police authority considering engaging him would be impressed with that.

Senator Hastings: I think one would be as impressed if the National Parole Board were to carry out the investigation.

Mr. Street: That is true. I really think, even though our officers could be discreet, it is impossible to have one of our parole officers in a small town, who is known as a parole officer, going around and making inquiries. It would be known that it was done for only one purpose. An RCMP officer may be doing it for a dozen different purposes.

Senator Prowse: In a small town he does not have to go around. In small communities I think those fellows are pretty effective, and it is because everyone knows everything about everyone else.

Mr. Street: We do not have parole officers in small towns. The police do.

Senator Hastings: You have 35 officers.

Mr. Street: In a small town it is easy to get the information. You could get it by a couple of telephone calls.

Senator Hastings: This is the point I am making.

Senator Prowse: We are trying to get everybody out of work.

Senator Hastings: We are trying to get the RCMP out of work.

The point I am making is that the officers in your employ could make the investigation as discreetly as the RCMP officer. If a further investigation is necessary, I think your officers are capable of making a decision after an interview with the man, and a check of the records.

Mr. Street: I think we ought to encourage them to come to our offices. It may be a great deal more work, but it would be more efficient and more expedient.

Senator Prowse: This may speed it up. They take an average of five months to process now?

Mr. Street: Yes.

Senator Prowse: We are of the opinion that in many of these cases you are very seriously carrying out your instructions. Please understand that this is not a criticism.

Mr. Street: Thank you.

Senator Prowse: The result is that it is holding up the granting of the pardon, and I know of a case where this became a problem. A fellow wanted to go overseas and needed a visa. It is his fault that he got into trouble, but it seemed to me that in the circumstances the pardon could have been granted almost automatically. We can do it in two ways. First, in respect of certain types of minor offences it could be automatic on application, pending a check to see whether there was anything else in the records. Secondly, we can track it down. Let us take the case you mentioned earlier of the fellow who had not been convicted of anything, but he was drunk all the time and was a bum around town. I am sure the local police would be able to tell you that they know something about that person and then, only in those special cases, would it be necessary to do a more serious check. In other words, the check would be taken as almost an appeal against a refusal of a pardon, and only in those circumstances. That would relieve everyone of an unnecessary workload, which is generally a waste of everybody's time because the granting of the application, on the basis of only two turned down, is going to be automatic. Can we work out a formula by which nearly all of these could be automatic, in the absence of evidence to the contrary? You would notify the police authorities and they would have the right to put in a caveat if they wished. That would take care of certain types of persons who are consorting regularly with criminals and the other people you are speaking of. Does that area suggest a possibility to you?

Mr. Street: I agree with you, senator, that we should not waste time on investigations that are not necessary, and that we should shorten them as much as possible. It

may be, although it was not done deliberately, that in some of these cases a more detailed investigation was asked for than was necessary. I would agree that we should try to cut it down, especially in not very serious matters. I am in agreement with some of the things that you have said. This has suddenly blown up in the last year when we had 700 files, while in the previous year we had only about 100 or so.

Senator Prowse: Who knows how many you will have next year.

Mr. Street: That is true. I agree we will have to streamline it.

Senator Prowse: But not to cut out the purpose of the act, nor go to the point where you become another civil service.

Mr. Street: We do not want all this extra headache and work. We are busy enough processing 15,000 applications for parole each year, and maintaining 5,000 people on parole. The police have plenty to do.

Senator Prowse: I am sure the police have other things to do as well.

Senator Hastings: Did I understand the minister correctly when he said 480 investigations had been completed?

Commissioner Higgin: There have been 480 since the coming into effect of the act completed by us, up to about two weeks ago.

Senator Hastings: Did I understand the minister correctly to say that you have had no complaints with respect to the inquiries?

Mr. England: I did not hear what the minister said.

Senator Hastings: Have you received any complaints with respect to the inquiries?

Mr. England: I received a complaint over the phone and one in writing. The result of this investigation showed that this person could not hold a job, and was a very hot tempered person who infuriated his fellow-workers. He wrote in and said that he did not like the investigation that was being conducted. That is one individual. The results indicated that he was not a normal type of person. I did have one phone call in which a person said that he was slightly embarrassed because his employer was not contacted. It could be the investigator, in using his judgment felt that he might prejudice the employee's position, so he did not go to the employer. That is all we have had.

Senator Hastings: Do I understand you to say that because a man is hot tempered you do not give him a pardon?

Mr. England: I am just indicating the type of person that he was. That is the result of the investigation.

Senator Prowse: You said he could not hold a job because he could not hold his temper. In other words, he would complain, anyway.

Mr. England: That is what I thought from the results of the investigation.

Senator Prowse: Did you grant him his pardon?

Mr. England: He requested that we do not proceed. I wrote to him and told him the investigation was completed, and asked if he would like to think it over.

Senator Hastings: How many have you agreed to without an investigation or a very minimum investigation?

Mr. Street: I would say very few. Most of them are quite unknown to us and I do not think we would be able to do this every time. I would say that we have to have an investigation, such as you are speaking of, in almost all cases.

Senator Hastings: He could just go to the parole office.

Mr. Street: If he could come into the parole office and produce enough information.

Senator Hastings: Or show cause.

Mr. Street: We have not tried that idea. If we could, and if that would shorten it, I would be in favour of it. I think you were misled a little while ago about two out of 180 being refused. That was not correct. I can give you the exact figures. Last year the pardons were 113 granted, and 35 refused. The year before 69 were granted and 74 were refused.

Senator Hastings: That does not alter my figure of 170. As I understand it, you have completed 488 investigations and, as a result, you are going to reject two.

Mr. Street: No, there will be more than that.

Senator Prowse: What is the percentage of rejections you have processed to date of the number upon which you have finished your investigation?

Mr. England: Of 58 advanced to the criminal records board, two have been denied.

Senator Prowse: Why were they turned down? There is a basis for the refusal.

Mr. England: When the board turns down an application for a pardon, the person is advised of it and given 30 days to make representations, either by himself or his solicitor. In this one particular case the person did make representations and statements to the board.

Senator Prowse: He was still turned down?

Mr. England: He is still being investigated. He made statements to the board and the board has directed a further investigation to be made, and that the person be interviewed by the investigator. The report has just come in. The statements made by the person were not correct. When it is suggested that the person come forward and merely tell a parole service officer what a fine person he

has been, we find that this is not always so. The figures that Mr. Street has just given you indicate that 74 were turned down, and these were turned down after investigations indicated that if those persons were granted pardons it would be an error, in that they could use them in a manner which would be to the disadvantage of employers, society, et cetera. This often happens. Some of the denials in the past have been as a result of a thorough investigation where all references all spoke very badly of him, and of suspected thefts where he was not prosecuted, and continual suspicion that the person is border-line or working or associating with criminal elements.

Senator Prowse: The problem that Senator Hastings is concerned about is that there have been certain individuals who have made application, and who have been living not only a life of undetected crime but a reasonable life, in the community, and who thought, "I can get this last load off of my mind. I will not be subjected to answering questions in a particular way any more," and who were then shocked to discover that people whom they knew suddenly became aware that they had a criminal record. This would never have become known if the person had not made the application for a pardon. This, I think, is what we are talking about when we say that the investigation defeats the purpose of the act. In other words, we are wondering if it is not possible to set up a procedure whereby the great bulk of these cases could be covered in a routine way with the investigation limited to the law enforcement areas. If the police have no reservations, but when you go to see a neighbour he says that the man is a real thief who stole his lawnmower and it took six months to get it back, then you have to investigate further. But if a person is involved in criminal associations and is maintaining criminal associations, then any police force in the country knows about this. They know about it better than the neighbours do. What we are doing is trying to keep the investigators away from the neighbours or the people in the community who, unlike policemen and people in the law enforcement business, do not have an obligation to not unnecessarily publicize certain matters. If you could keep it to that point to cover the bulk of these applications, and then with border-line cases still maintain the right to investigate because you feel it is necessary to do justice to the person, I think that would meet both your concern about the amount of work that is involved and our concern about possible harm to people who really do not deserve to be harmed at this stage.

Mr. Street: The police or anyone else would not speak to a neighbour, unless the man himself had so directed.

Senator Hastings: Mr. England said they can go anywhere.

Mr. Street: They can, but they check out the references.

Senator Prowse: I would anticipate that this is carried out by junior officers to give them experience. You are

really able people, and you are needed for more important things.

Senator Belisle: The five of us who volunteered to form this subcommittee did not volunteer just because we wanted to complain. I joined the subcommittee because I am very pleased with the work done by Mr. Street. I have been associated with his work in northern Ontario for a long time. I am very pleased to say publicly that I was very impressed when I watched him on two different occasions on television by his human and sincere approach to individual problems.

Mr. Minister, at the beginning you said that you would like to answer for the policy of your department. May I be informed as to what criteria or yardstick is used to select members of the Royal Canadian Mounted Police to do this work? Have they special knowledge? Are they selected from a special field? Do they have good human or public relations, or are they selected because they have been good at detecting crimes?

Hon. Mr. Goyer: I think, senator, since this is a question relating to operation, that the Commissioner should answer your question.

Commissioner Higgitt: I would like to clear up one point in answering that question. We only make inquiries when we are asked to make inquiries by the Parole Board. The RCMP does not get, and automatically investigate, applications for pardons. We try to give the best possible service that we can to the applicant, in the sense of protection of his interests and identity, and that of his family and livelihood, and the best service we can to the Government and the department.

You asked what kind of men are assigned these duties. They are men who are doing a wide range of police duties. All of them are trained investigators. They are not always the most senior, but certainly not the most junior. The most junior would not be put on this kind of job which has certain delicacies about it. They would be basically men with a good amount of general investigative experience. We deal with these matters as competently and as efficiently as we can, having regard to the rights of all the people concerned. In so far as it is possible, we try to select a man to do the particular job. Of course, this is from coast to coast, and there may be one case in Northern Alberta today and there may not be another one for months and months; there may be another one in Nova Scotia. It is not the same officer who investigates in both those areas. It is practically impossible to do that. They are all trained members of the force and experienced investigators, and they would not be the junior men on the force.

Senator Belisle: The discretion with which they go about their jobs must be an asset. They do not tell everyone in town that they are in town.

Commissioner Higgitt: I would like to be able to say that we do not do that anyway. We are as cautious as we can be.

The Chairman: Do the RCMP have details or knowledge of a person's behaviour that officers of the Parole

Board do not have, or have they got a sort of technique or expertise that is more suitable for this type of investigation?

Commissioner Higgitt: Mr. Chairman, I would like to think that of this moment we have techniques that are perhaps more experienced. This is not to say that parole officers could not become just as experienced.

In answer to the question as to whether we have information that the Parole Board officers do not have about a given person in a given area, I think I would have to say that the police generally are likely to have information that the parole officer would not have. This does not mean the parole officer could not get it if he went to all the police in the area.

I might also answer a question that was asked a moment ago in which it was said that the police could say that they have no reservations about this man so he is all right. This implies, of course, that we have information about everyone, but police forces do not have information about everyone. If a parole officer or someone came to the police and asked, "Do you have any objection to a pardon for this man?" I would point out that the fact that we did not happen to have any information about him is not really necessarily a recommendation. This would imply we know everything bad about everybody, and we simply do not. This is why it has been decided by the Parole Board that a certain level of inquiry has to be made.

The Chairman: A pardon is granted, and there is always some criticism on the part of the public that a criminal is given a pardon. If there is any backfire from the public on it, I suppose there is an advantage in the Parole Board's being able to share the responsibility with the RCMP.

Senator Prowse: You are a cynic, Mr. Chairman.

The Chairman: I always like to have the second opinion. Does that have any influence on it?

Mr. Street: It is very helpful for us to get the views of the police. It is true, as you have mentioned, they may have information about someone of general reputation. There is no better source of information in a small town than the Chief of Police, especially if a man has a reputation and if they suspect him of any illegal activities. I am sure that they might have this information, and it is useful to have the man checked out by an objective organization such as the Royal Canadian Mounted Police, who get information from the best sources. I emphasize again that the check is on the references the applicant has given us, and unfortunately now and then you will find one of these references does not speak as favourably as the applicant thought he would.

Senator Hastings: I am not here to complain, either. I am here in the spirit of looking objectively at this act, and making some suggestions. It must be obvious from the number of applications you have received that there is a great host of Canadians who would like to apply for pardons, and who are not doing so because of the danger

of having their past, which they have had to cover up, exposed. I would like to say also that I support you, sir, in the great liberal work you are doing in reform, with small help and in very difficult circumstances. Especially, I would like to back your statement that these people should be treated as citizens. They have paid the price for whatever they have done. They have re-established themselves within society, and as citizens have applied for pardons, which just brings me to this one further question: Can you tell me, sir, of any other area, with the exception of criminal activity or the security of the state, where the RCMP are used to investigate individuals?

Hon. Mr. Goyer: Perhaps the Commissioner could answer this question.

Commissioner Higgitt: The Royal Canadian Mounted Police are used to investigate individuals who threaten the security of the state.

Senator Hastings: Or who are suspected of criminal acts.

Commissioner Higgitt: I think under certain acts, in the case of someone applying for a licence, or a game warden, for instance.

Senator Hastings: The only one I know of is the Immigration Act.

Commissioner Higgitt: Game wardens, perhaps. Regarding the appointment of certain persons, we might be requested to investigate.

Senator Prowse: That would really be security.

Commissioner Higgitt: Of a type. Frankly, I cannot think of one. I would like to reserve my answer for a moment or two.

Senator Prowse: Your investigations are really limited to those two areas.

Commissioner Higgitt: Basically security.

Senator Hastings: But the answer is "no".

Commissioner Higgitt: Basically, I think; and, again, I would like to reserve my answer.

Hon. Mr. Goyer: May I speak on a point of clarification? Of course, the RCMP do not direct an investigation at a particular segment of our citizens. There is no general policy aimed at a particular group of citizens in this country. Having pointed that out very clearly, if one were engaged in subversive activities or in a criminal act, then the police would certainly investigate. Otherwise, it is just for particular purposes, under certain acts, or for Government security clearance purposes of the individual.

Senator Hastings: One other question: Do you utilize any other police force?

Commissioner Higgitt: No, except if, for example, this was in the City of Toronto, we would certainly inquire whether or not the local police had a record on this

person. We would not use them as investigators. We would ourselves seek the record from them.

Senator Hastings: What would you do in the case of a Canadian citizen living in the United States for seven years?

Commissioner Higgett: In that case there are often particular things the Parole Board ask us to do. Generally speaking, we do not investigate the whole area of this person. We might be asked, "Could you check his employment for the last five years?" "Could you find out what his citizenship is?" In these cases we would put the direct question to the authorities in the United States, which would probably be the Federal Bureau of Investigation.

Senator Hastings: Do you interview the individual concerned?

Commissioner Higgett: Again, it is decided on the merits of the case. Sometimes the individual or Parole Board asks us to clarify a conflict in two statements or in an application form. Sometimes the applicant himself says that, "I do not want to be interviewed because of certain problems." We respect that. I think it would be fair to say that we very often do but, again, under the most careful circumstances. We are as careful as we can be.

Senator Hastings: I think those are all the questions I have.

Senator Prowse: Mr. Chairman, may I come back to the one thing I am trying to get at? It is this: With a great number of these cases it seems to me that it could be almost automatic. Mr. Street, did I understand you to say that if an application comes in, because of the position that applicant holds you assume that the people around him would know if he had a record; and that if he did, they would already have complained and he would not be holding down the job? Do you say that this is assumed, as a matter of course, and you do not investigate further?

Mr. Street: That is quite right. I can only think of one case where it was so obvious we did not need to check it out, but we do not get many like that, as Senator Hastings has mentioned.

Senator Prowse: Yes. What happens is that if you do not have any knowledge of an applicant at all, then you will ask the RCMP if they can find out anything. Is it not possible at that stage, without giving them a recommendation by not damning them, to have the police make a preliminary investigation, limiting it to official areas, and then, if nothing disquieting comes out of that, could not the matter be dealt with automatically? I am thinking of the situation where, on the face of it, you have no reason to suspect that a man is other than what he appears to be. Or perhaps his virtue is so obvious that you feel an investigation would be a complete waste of time. I am not trying to be smart, and perhaps I have expressed my thoughts badly.

Mr. Street: I think we would want to know whether the police have anything against him. In a big city like Toronto or Winnipeg they may not know very much about him, but he still may not be a very responsible citizen. We would like to know about his work record, about how he treats his family, and so on. It does not take long to find out whether or not he has a family, whether or not he is looking after his family, whether or not he is drunk all the time, and whether or not he is a responsible person. We do not need to take much time to find that out, and he is invited to give us that information himself.

Senator Prowse: One of the things we have in mind is this, that an expression of confidence by way of a pardon—which, after all, can be revoked if he does anything overt at any time—might provide him with just the psychological lift he would require to keep him on the track. We are wondering if it would not be saving you work, achieving the underlying purpose of the bill, and cutting the waiting period, which can be a problem in some instances. That is not a criticism of what you have been doing, but is simply said in order to try to streamline the process. Would you be happy with the situation in which these matters were practically routine, unless there appeared on the face of the record, immediately observable, something that cause your people to say, "Well, just a minute now! This fellow has not been convicted, but we know who his friends are." As an example, take a city like Toronto or Edmonton. I have in mind the fact that I was a narcotics prosecutor for two or three years, and I practised law as a criminal lawyer in Edmonton for a time. I got to know the RCMP very well and developed a high regard for them, but one of the things that always did surprise me a little was that they were never quite convinced—and these were first-class men in the force—that anyone who was once a criminal ever really ceased to have that innate, latent potentiality for repeating crime. This is the one reservation I have about having the RCMP in on this. With all respect, I thought I sensed a little of that from both of you today, in some of the things you have said. I thought you were concerned about matters that, in my opinion had nothing to do with crime. This is not a certificate of good character, morally speaking.

Mr. Street: Well, that is what it says: "Good behaviour..."

Senator Prowse: Well, "Good behaviour". Good behaviour is not behaviour that satisfies God, but behaviour that satisfies the laws of the land, and I do not think we can confuse those two too easily.

Mr. Street: No. Well, I am not quite sure what to say. I really think the reports we get from the police are quite fair and objective. Regarding your experience with the police, I really think the views and the attitude of the police towards parolees and pardons has become much more liberal in the last twelve years, since I have been involved in this area.

Senator Prowse: I think that is true.

Mr. Street: And I think it is only fair to remember that the police, judges and magistrates see all our failures; they do not see all our successes—although the police sometimes do see our successes. So it is always hard to do. Perhaps you are suggesting that we are setting too high a standard for granting pardons, and I did not mean to give that impression. I simply meant to say that we want to know whether the man is a reasonable and responsible citizen: Is he supporting his family? Is he working steadily? Does he have a problem with liquor? Does he pay his debts? If we are so satisfied, then, by all means, give him his pardon. We do not care what his circumstances are as long as he is a reasonable and responsible citizen. The act uses the words “good behaviour.” I would not have used those words if I was drafting it, but that is what it says: good behaviour, good reputation.

Senator Prowse: That is referring to good legal behaviour.

Mr. Street: Yes.

Senator Prowse: I think we have to have some kind of basis.

Mr. Street: Well, I would not consider it good behaviour if he was irresponsible, drunk all the time, did not support his wife, was in debt, had a bad reputation, and nobody trusted him, and things like that. We get a few like that. We have to make recommendations to the minister, and the minister has to make recommendations to the Cabinet. We have to be fairly responsible regarding the information we furnish.

Senator Prowse: What I am trying to get at is this: On the basis of your experience, is there an area where we could relieve everybody of the responsibility by saying, “If these criteria are met, no investigation will be necessary at all, and as a matter of form a pardon will follow, subject, of course, to revocation.”?

Senator Eudes: Yes, but would that protect society?

Senator Prowse: I do not know whether it would or not. This is the question I am raising. Perhaps the whole value of it would be lost.

Mr. Street: Well, that is what I am trying to avoid, sir. For instance, when a child, any one of us in this room might have been convicted of stealing apples from a farmer's orchard. That was theft and we could have been convicted. That is an extreme example; but supposing one of us had stolen a bike or something when we were a teenager; it could have happened. 20 or 30 years later I am not about to waste time making an investigation regarding a minor offence of a teenager 20 or 30 years ago. However, that is not the kind we get. We are getting applications from those in a great rush who apply before the five years are up. It is the more difficult cases we have to deal with. The more deserving cases, as I think the senator indicated, do not apply for it because they usually have no particular use or need for a pardon unless it is to get a visa or something of that sort. We are dealing with some borderline cases.

Senator Eudes: We have to protect society from those who are too eager and do not want to wait the five years.

Mr. Street: Well, some of them are in a great hurry to get a pardon and I think five years is a reasonable time to wait. That is the law now. It used to be the policy, but now it is the law. Two years on a summary offence is a rather generous attitude to take, and some of the borderline cases and some inadequate people, perhaps who may not be deserving, cannot even wait that long. It is very hard to delineate standards, except in a general way. I have not had a chance to discuss this in any detail with my minister, to find out what his views as to standards are. Perhaps that is my fault.

Mr. England: In view of the pardon-granting powers of many of the states of the United States—my section wrote away to a great number of them, as well as to France and England—I cannot help but come to the conclusion that a person in Canada gets a pardon with less administrative difficulty than anywhere else. In many of the states of the United States a person's intention to apply for a pardon has to be published in the newspapers, he appears before a court and also gives notice of intention to the chief of police. Then his rehabilitative period follows his notice of intention, much like citizenship. Whereas under our policy all the applicant has to do is write a letter on the back of an envelope and the whole process takes place, without a solicitor or anything. From that point of view I think this pardon-granting policy is a generous procedure. It is a fact that after receiving the results of the investigation—and hindsight is a wonderful thing—we could say, “We need not have investigated this case”; “This case was over-investigated,” but where and when do we draw the line? One more reference may reveal a part of the character of an applicant that was not known.

Senator Hastings: You speak of many of the states in the United States. I understand there are only five.

Mr. England: No, there are a great many more than that.

Senator Prowse: Is not one of the problems down there that a conviction carries with it the abrogation of certain civil rights.

Mr. England: That is quite right.

Senator Prowse: So that may be the reason for their procedure, and that is why a person might feel that it was worth while. It may be a better way of doing it.

Mr. Street: A presidential pardon is investigated by the FBI.

Hon. Mr. Goyer: May I interject a few ideas, Mr. Chairman? When dealing with inmates and ex-inmates we have to be very careful that we do respect their dignity and privacy because, as has been pointed out, we have to consider them as citizens; they are still citizens. I see nothing in the law which means that an inmate or an ex-inmate has lost his citizenship as a result of having been convicted of a criminal offence. We also have to

bear in mind that approximately 85 per cent of the inmates in our institutions are recidivists. The work of the National Parole Board, the rehabilitation of the inmates, and the parole services in support of the Parole Board decisions have improved, and will improve greater, I hope, in the future. Nevertheless, those are facts of today.

I think I am on record now that in the department we would like to put much more emphasis on the rehabilitative process than on the punitive process which was more or less the priority in the department over a certain period of years. I do not know if we will rate better, but let us try it and let us find out if we can improve the figures. I do not think that we can just forget about the protection of society; it is also an important consideration, even if it is not the prime one. The figures show that in the past the Parole Board has recommended to Cabinet many cases for the granting of pardons. Nevertheless, the Parole Board has also decided to refuse applications. I do not know if you are aware of the figures.

Senator Hastings: We have the figures.

Hon. Mr. Goyer: Yes, you have the figures. These prove, after a serious investigation, that we were not able to recommend a pardon because we were not satisfied that the citizen would not be a recidivist in a very short period of time. However, I agree that we have applied the law in a liberal way up to now, and it is not our intention to become more restrictive or more permissive, but it is to try to balance the objectives in the application of this law.

I do not know if you are satisfied with the way the investigations are carried out, but there is also another consideration of some importance. I am responsible in Parole Board and Penitentiary Service, but also for security in the country. We all realize that, because of this department not only for the RCMP, the National the nature of our society, in the future we shall require more of these services. The hiring of more staff for the National Parole Service, to direct those investigations, could make an improvement, if you are not satisfied with the way the RCMP are conducting those investigations, but I would prefer to keep on with the Royal Canadian Mounted Police. After all, if we have to hire more staff, I would prefer to hire more police officers and, thus, to have more flexibility at my disposal.

The point is that we can use a certain number of police officers to direct those investigations, but in case of an emergency we could then fall back on those same officers and put them to work on more urgent matters when there is an emergency. In other words, we would suspend the investigations with respect to criminal records. That can wait because it is not a matter of top priority, while a threat to society, for example, would receive top priority and would necessitate our calling upon all of our human resources in order to cope with the situation. Thus, the officers assigned to investigate criminal records would be a kind of reservoir, if you like, which I would have at my disposal.

Senator Belisle: Mr. Minister, would it not be possible to have special training for officers who would be making these investigations?

Hon. Mr. Goyer: Special training? At the moment we provide a six-months training course, and I am satisfied that the officers are very well prepared to handle these investigations after their training course. Moreover, with the training they now receive they will still be able to be called upon as police officers; but if they were given a training that was specialized solely for purposes of investigation it might be that I could not call upon them in case of emergencies, as I have suggested I would wish to do.

Senator Hastings: Surely the emphasis must be on the rehabilitative treatment of the individual citizen. If that is so, I would submit that it is the rehabilitative arm of your department which should be strengthened. After all, the granting of this pardon, with its attendant investigation into the individual's life, is, I suggest, the final act of rehabilitation, and the people best qualified to carry out the investigation into the life of that individual are precisely the employees of your parole board who have knowledge of what the man has been through. Certainly, from my experience with these men it is obvious that your parole officers can make an objective judgment in almost every case; and they can do so within the space of a two-hour interview in the person's home together with two or three checks on the person. This would not necessitate bringing the law enforcement agency of society back into the parolee's life.

After all, the parolee has paid his price. He does not want to have anything to do with the police anymore. He wants to stay as far away from them as possible. Bringing them back into his life is just not consistent with the rehabilitative process and the final act of rehabilitation.

I repeat that I hope it is the rehabilitation aspect that you are going to emphasize, and not the law enforcement aspect.

Hon. Mr. Goyer: I do respect your views, Senator Hastings, but we are trying now in this department to have more of a relationship between the agencies and to consider our role not only in terms of prevention of crime but in terms of the rehabilitation of the criminal. Included in the rehabilitation is the correctional aspect of the rehabilitative process, because, of course, rehabilitation takes places not only outside, after the release of the inmate, but within the institution during his imprisonment. Another very important factor in whether a person is easily rehabilitated or not is the actual sentencing. As you know, there are no guidelines for the judges to use in deciding what sentences they will impose on the individuals who come before them. Because of that, the process of rehabilitation may be affected according to whether or not a convicted person feels he has been treated justly.

This is not by way of a criticism of the judiciary or judges in particular; but perhaps it is time for the judiciary and the Government and the other societal agencies concerned with people who have been accused to sit

down together and to decide upon guidelines that can be applied right across Canada. However, that is another question.

May I just point out that we do not consider the police as a negative element in our society by virtue of its role of prevention of crimes. And it may be that we should be working harder towards creating an image of the police as a positive force within society, one that assists citizens in a preventive way by enforcing laws which are promulgated not by the police but by another branch of society. The police could very well adopt the attitude that, if society does not like a particular law, society should change that law.

Just to go back to the rehabilitative aspect for a moment, if the police can play a positive role in the rehabilitative process, as I believe the police can, that would be a large improvement, because the more that the police are considered a negative element in our society, the larger will be the segment of our population that will look upon the police with a negative attitude, and a confrontation with police services is a bad thing.

It is my feeling that if we do not build bridges between society and the police, especially between the police and the youngsters of our society, then one day we will take a retrograde step and will end up with a much more punitive society than we have today. Our policy is, therefore, directed towards avoiding that situation.

On the administrative side of my responsibility is the fact that within the same department I am trying to build in a certain amount of flexibility. It might be idealistic to say that each one should have a large number of civil servants to do the job in a better way, and I have received representations from the parole board and from the police and from the penitentiaries services, but I am responsible to the Canadian taxpayers at large and if I can save a dollar without any backlash to the citizens or, in this instance, for the representations of the citizens, then I think it is my duty to try to do so.

The Chairman: Mr. Minister, do you know of any person on parole, or any person who has been pardoned and is now back in the good graces of society, who has ever been allowed to serve as a jurymen on a trial?

Mr. Street: I do not know of one, Mr. Chairman.

Hon. Mr. Goyer: I do not know, Mr. Chairman.

Senator Prowse: There is nothing disqualifying such a person.

Commissioner Higgett: I should think it quite possible, but I am sure he would be challenged.

The Chairman: You know, it is becoming fairly well recognized that former "cons", as they are called, are rather successful in rehabilitating others.

Interestingly enough, in front of the Parliament Buildings yesterday I met a chap carrying a placard. He had a grievance. We had a little discussion about rehabilitation. He said that there is no such thing as rehabilitation in an institution or anywhere else, but that the fellow has to do

it himself. His point was, "how can a man stay rehabilitated if he cannot get a job and get some assistance." The point I had in mind is that if former "cons" make good social workers, would they not also be good jurymen?

Senator Prowse: Of course, Mr. Chairman, defense lawyers receive a copy of the list of jurymen to be called. They receive that list about two weeks in advance of the trial, and part of the routine is to run a check on every jurymen to find out as much as possible about him in order to know whether or not you want him on the jury. So I would think that this is something that is a self-correcting situation, if they are on or off. I can see situations where I would be quite happy to have one, but I can think of other cases also, depending on what the man's crime was.

The Chairman: If you are defending a bootlegger, you like to have a bootlegger on the jury.

Senator Prowse: Or a drinker.

Hon. Mr. Goyer: Mr. Chairman, may I table a brief on the way the inquiries are conducted under the Criminal Records Act, it is in both languages. It may be of some use to honourable senators.

Senator Prowse: Thank you very much.

Senator Hastings: Mr. Minister, I wonder if you would also have Mr. England give us a breakdown in writing of the numbers received, and the various categories. We have bandied round figures about here.

Senator Prowse: With disposition as to date and the present status of the applications pending.

Mr. England: We can certainly do that.

Senator Prowse: I should like to say one thing. I made a statement earlier about the RCMP, and it occurred to me it might be subject to misunderstanding. When I said they were very reluctant to believe a leopard could change its spots, I think perhaps I should have added that those conversations took place in the context in which we were discussing two cases of men on habitual criminal charges, the other fellows were in and out of crime, and the RCMP were just not going to believe these fellows were about to be changed. As a matter of fact, the facts bore out their judgement.

Commissioner Higgett: Thank you very much, senator.

Senator Prowse: I just wanted to make that clear. I believe they have to be suspicious, otherwise they would not be of any use to the police force.

The Chairman: That is it.

Senator Prowse: That was the only point I wanted to make, because I wished it to be clear that I did not want to be unfair to anybody.

The Chairman: They all understand that. If a man went to sleep at the wheel of his car, ran into a ditch and had an accident claim, before he got insured again the insurance company would probably want to know his

tendency to fall asleep at the wheel of a car. It is all the same sort of thing.

Senator Prowse: They would want more than that, mostly money.

Commissioner Higgitt: Senator, I knew you did not intend anything else.

Senator Prowse: No, and I wanted to make that clear.

Commissioner Higgitt: I want to assure you that in these particular cases we are very factual in our reports, so far as is humanly possible.

Senator Belisle: Mr. Chairman, are you prepared to accept a motion for adjournment?

Senator Hastings: As I understand it, we will have the John Howard Society at our next meeting.

The Chairman: I think that is what we asked for, in two weeks time.

Senator Hastings: Two weeks from today. Will the department officials be available after we have seen the John Howard Society, and other societies, if we need them?

Senator Prowse: If we need them again I presume they will be available.

Hon. Mr. Goyer: We are at your disposal.

The Chairman: Is it agreed that this brief headed "Brief—Inquiry. Criminal Records Act" be printed as an appendix?

Hon. Senators: Agreed.

The committee adjourned.

APPENDIX

BRIEF—INQUIRIES
CRIMINAL RECORDS ACT

The Solicitor General, when introducing Bill C-5 (the Criminal Records Act) stated:

"The Bill represents an attempt on the part of the Government to bring forward legislation that will deal with one aspect of the field of corrections that has been causing concern to all those working in the field and to public figures who have thought about the subject. The area I speak about is the apparent and unjust consequences that still attach to a person who has been convicted of an offence but who has long since rehabilitated himself and become integrated into society in a wholly satisfactory way".

The Criminal Records Act placed new duties on the National Parole Board. These duties are:

(a) to cause proper inquiries to be made in order to ascertain the behaviour of the applicant since the date of his conviction pursuant to subsection (2) of section 4 of the Act.

(b) report the results of the inquiry to the Solicitor General with its recommendation as to whether a pardon should be granted, and,

(c) in any case where the recommendation of the Board is a denial of a pardon, consider any oral or written representations made to it by or on behalf of the applicant.

In essence, the application form is virtually the same as that used in processing applications for a pardon under the royal prerogative of mercy. The purpose of the form is to establish the identity of the applicant in order to obtain his criminal record and to provide the investigator with references in order to obtain information relating to the behaviour of the applicant.

In processing an application for a pardon under the Act, the following are the basic steps in each inquiry:

(a) the acknowledgment of the letter requesting a pardon, or requesting information in respect of a pardon, and where applicable, forward the application for pardon form together with an extract of the Act and any necessary advice to the applicant.

(b) acknowledgment of receipt of the completed application form.

(c) obtain from the custodian of records the criminal record of the applicant and where applicable, the applicant's military service record.

(d) request information from the appropriate police force or where applicable, federal department to determine the circumstances of the offence committed.

(e) request the RCMP to make a community investigation to determine the behaviour of the applicant.

It is thought that the circumstances of the commission of the offence are relevant and where possible they are obtained. There are, of course, many applications for pardons involving offences which occurred 15 or 20 years ago, and details of the circumstances are not available. Many Metropolitan police forces, e.g. Montreal and Toronto do not retain their records over 10 years. The processing of an application is not delayed if the circumstances of the offence are not available. Where the details of how the offence was committed are received, they confirm or otherwise the statements made by the applicant and indicate more clearly the nature of the offence committed.

The number of applicants for the grant of a pardon who have been former parolees are few but no doubt will increase in the future. Where there is a parole file, relevant information from the parole file is used and obviates many of the steps in the investigating process.

The Board has received applications from applicants employed in what they consider to be sensitive positions who have requested that their application not be proceeded with if an investigator is employed. Such applicants have been advised that in lieu of the normal investigation, if they produce statements from well-known persons in the community who by virtue of their status and position their creditability and reputations are beyond dispute, such statements would be acceptable. This procedure has been used sparingly but has not been refused where it has been requested.

The investigation made by the R.C.M.P. is done as discreetly as possible. The investigator identifies himself and informs the person he is interviewing that the investigation is being carried out on behalf of a department of the federal government. The person carrying out the investigation is normally a trained investigator and a member of the criminal investigating branch of the force. He is therefore a policeman with experience and not one who is carrying out the investigation for experience. At no time during the course of the investigation is the reason for the investigation stated and where during the course of the investigation it appears to the investigator during an interview that he may jeopardize the reputation or employment of the applicant, he terminates the investigation.

Each investigation normally involves a check of the local police records to determine whether any other offences have occurred. This liaison between the federal, provincial and municipal police forces is considered valuable.

Many applicants have lived in several localities since the commission of their offence and give as references persons living in other than the community in which the applicant is then residing. The investigation in such cases involves several elements of the force and the assembling of the results of the investigation by the Force.

Attached are statistics relating to applications received and processed under the Act.

CRIMINAL RECORDS ACT

Statistics

Pardons granted under the Criminal Records Act, June, 1970, to May, 1971	37
Submissions awaiting Natonal Parole Board's decision	12
Total number of Board's decisions under the criminal Records Act	85
Total number of active files under the Criminal Records Act	766

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THIRD SESSION—TWENTY-EIGHTH PARLIAMENT
1970-71

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**
(Sub-committee examining Criminal Records Act)

The Honourable A. W. ROEBUCK, Chairman
The Honourable E. W. URQUHART, Deputy Chairman

No. 9

TUESDAY, JUNE 15, 1971

Second and Final Proceedings of the Sub-committee examining the
“Criminal Records Act”

(Witnesses and Appendices—See Minutes of Proceedings)

THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*

The Honourable E. W. Urquhart, *Deputy Chairman*

The Honourable Senators:

Argue	Hayden
Belisle	Hollett
Burchill	Lang
Casgrain	Langlois
Choquette	Macdonald (<i>Cape</i>
Connolly (<i>Ottawa West</i>)	Breton)
Cook	*Martin
Croll	McGrand
Eudes	Méthot
Everett	Petten
Fergusson	Prowse
*Flynn	Roebuck
Gouin	Urquhart
Grosart	Walker
Haig	White
Hastings	Willis

(Quorum 7)

..**Ex officio member*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, April 28, 1971:

"The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Hastings resumed the debate on the motion of the Honourable Senator Hastings, seconded by the Honourable Senator Prowse:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the operation and administration of the *Criminal Record Act*, chapter 40 of the statutes of 1969-70, and in particular upon the operation and administration of subsection (2) of section 4 thereof.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative, on division."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, June 15, 1971.
(10)

Pursuant to adjournment and notice the Sub-Committee examining the Criminal Records Act (Legal and Constitutional Affairs Committee) met this day at 9:30 a.m.

Present: The Honourable Senators McGrand (*Chairman*), Hastings and Prowse—(3).

Also present, but not Members of the Sub-Committee: The Honourable Senators Croll and Fergusson—(2).

The Sub-Committee proceeded to the consideration of the following Motion by the Senate:

"That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon the operation and administration of the *Criminal Records Act* Chapter 40 of the statutes of 1969-70, and in particular upon the operation and administration of subsection (2) of section 4 thereof."

The following witnesses were heard in explanation of the Motion:

Reverend T. N. Libby,
Executive Director,
St. Leonard's Society of Canada,
Windsor, Ontario;
Mr. A. M. Kirkpatrick,
Executive Director,
The John Howard Society of Toronto,
Toronto, Ontario.
Miss Phyllis Haslam,
Executive Director,
The Elizabeth Fry Society of Toronto,
Toronto, Ontario

It was Resolved to print 800 copies in English and 300 copies in French of these Proceedings.

It was Resolved that the briefs enumerated hereunder be printed as appendices to these Proceedings:

"A" The John Howard Society of Vancouver Island;
"B" The John Howard Society of Quebec, Inc.;
"C" Daniel M. Hurley, Professor of Law,
University of New Brunswick;
"D" John Howard Society of Saskatchewan;
"E" Service de Réadaptation Sociale Inc.;
"F" The Elizabeth Fry Society;
"G" St. Leonard's Society of Canada;
"H" John Howard Society of Ontario.

At 11:30 a.m. the Sub-Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
*Clerk of the Sub-committee
examining the Criminal Records Act,
Legal and Constitutional Affairs
Committee.*

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, June 15, 1971

The subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs, to which was referred an inquiry into the administration of the Criminal Records Act, met this day at 9.30 a.m.

Senator Earl A. Hastings (*Acting Subcommittee Chairman*) in the Chair.

The Acting Chairman: Honourable senators, I will be acting chairman until Senator McGrand arrives.

I would like to table four briefs that we have received. They are from The John Howard Society of Vancouver Island, The John Howard Society of Quebec, Mr. Daniel M. Hurley, Professor of Law, Fredericton, New Brunswick, The John Howard Society of Saskatchewan, and The Service de Réadaptation Sociale Inc. I am also tabling the briefs submitted by the organizations represented here today; they are The Elizabeth Fry Society (Toronto Branch), St. Leonard's Society of Canada, and The John Howard Society of Ontario. They all deal largely with what we will be discussing this morning from The John Howard Society of Ontario. They will be included in the record.

[*Note:* The above briefs are printed as Appendices "A" to "H" respectively.]

Our first witness this morning is the Reverend T. N. Libby, of Windsor, Ontario, who is with the St. Leonard's Society. That is an organization dedicated primarily to the operation of half-way houses in the interests of the former inmates of penal establishments.

I welcome you, Father Libby. As you are aware, we are inquiring into the administration of the Criminal Records Act and its effect on former inmates, in particular the investigative portion of the act and how that aspect is being administered. I do not know whether you would care to make an opening statement, and informally from your experience tell us your views. Then we could discuss your brief with you.

Reverend T. N. Libby, Executive Director, St. Leonard's Society of Canada: Honourable senators, I am certainly privileged to be here this morning. We have already submitted a brief to you on the function of the St. Leonard's Society of Canada, which now has fifteen groups established across Canada. Nine of these are in operation, and we expect two more to be starting late this summer.

We provide a residence facility for offenders, which in one case includes women and in another probationers.

Most of our people come into the house after they are released on parole or, on the expiry of their sentence, from a penitentiary or reformatory. We think the Criminal Records Act is an extremely good one, but we are concerned about the investigative portion of it. We have known a number of people who have passed through our own house and other offenders who have applied for clearance of their criminal records. In one case, a man who has been out of trouble with the law for ten years, and now has a responsible position in the community, applied about last September for clearance of his criminal record. One night at about 11 o'clock an RCMP officer approached a Roman Catholic priest in the city of Windsor and began to inquire about this man. At this point the priest became very upset, called the man at about midnight and asked him to come over immediately, since the priest had not been given any reason for the investigation. If there is this kind of activity, it can be most dangerous to the community and to the ex-offender. Certainly, it is not admitting or acknowledging, in any sense, that this person has been successfully rehabilitated in the community. I know of a number of other cases in which people have been investigated and in which similar things have happened.

We feel very strongly in the St. Leonard Society that this investigative function should be removed from the RCMP and put under the National Parole Board, whose major function is approaching people in the community without this kind of negative effect a police officer would have in determining the extent of rehabilitation.

The Acting Chairman: Thank you, Father Libby.

When he was present as a witness, Mr. Goyer, said that the RCMP had completed 480 investigations under the act and that they had received no complaints. I, like you, have received complaints. Why are these people not complaining?

Rev. Mr. Libby: One of the things is that an ex-offender feels, and rightly so, that he has been so detached from the community. If he is particularly interested in having his record cleared, he may be very afraid to proceed any further with this, thinking it would be a negative aspect to the actual clearance of the record. This would be my thought, and I have heard people express this kind of thought that once they have made application they feel that is it, that that should be sufficient, and that they should not have to follow this up in trying to correct the damage that has been done.

The Acting Chairman: I think you are quite right. They do not want to prejudice any opportunity they

might have of receiving a pardon. Would an investigation by a parole officer, or by the John Howard Society or some other society, not be any better than an RCMP investigation?

Rev. Mr. Libby: I think it could have some of the same kind of effect. Ideally, a person who has been out of trouble with the law for five years on a particular offence, and has kept clear of any criminal activity, should be cleared; but since this bill does not allow that kind of automatic clearance, the lesser of the evils would be to have someone, who has experience and training in counselling and approaching people, to serve this function. It could have some negative effects, but it would not have anything near the effect a police officer would have.

The Acting Chairman: I agree with you. When the commission and all the organizations recommended that there be automatic clearance, subject to a search of the records, I cannot understand why we apparently intend to continue this investigation. The minister also said that he has to be assured that the person making the application for pardon has lived a life of good behaviour before he grants the pardon. As a representative of society, he wants to make certain that the person receiving the pardon is eligible. What do you think of that?

Rev. Mr. Libby: First of all, it is awfully difficult to be 100 per cent certain that a person is leading a perfect life, or the kind of life one would expect in a community. Surely, after five years, an ex-inmate has demonstrated his ability to interact with society and lead a useful and productive life. A police officer, whose function is mainly investigation of criminal activity before trial, is not really the kind of person who can assess a personality, in terms of how well he is integrating. People who are involved in this work—in particular, the parole officers, whether they be a private agency or the National Parole Board—are in a much better position to make this kind of assessment. Generally speaking, people who are experienced could make a pretty good assessment of the general rehabilitation of this man or woman. On the other hand, I do not believe that the average police officer, whose function is not in this area, really has the skills or the ability to do so.

The Acting Chairman: If a life free of criminal activity is all we are asking, why do we ask more of this man than we would of you or me?

Rev. Mr. Libby: This is one of the hang-ups we have in society, that we expect an ex-offender to demonstrate, not in general terms but explicitly and by many ways, that he has made it. It is unfortunate that we do that, but this has been our tradition, still is and probably will remain so for some time.

The Acting Chairman: It seems to me that we expect him to be a saint, though the rest of us can be sincere. We speak of a changed attitude of society, and these clichés about “rehabilitation” and “change of attitude”; yet we are given an opportunity to show a change of attitude and we do not show any change at all. We are still going to regard him as something below us and, even

though he has been free of crime, we are going to investigate him.

Rev. Mr. Libby: I suppose one of the problems is that when the laws are set up, naturally they are complicated and are expressed in language which automatically sets up a whole hierarchy of investigative procedures. I would still like to see the bill simply say that if an individual is clear of criminal activity for five years he will be pardoned automatically.

The Acting Chairman: On application?

Rev. Mr. Libby: On application.

The Acting Chairman: Very good.

Senator Fergusson: I am very much interested in this and would like to ask Father Libby what training the members of the National Parole Board have that makes them so good at this sort of thing. Would not the fact that they must be known in the locality make their investigation carry just as much of a stigma and be just as difficult?

Rev. Mr. Libby: It varies. Some members of the National Parole Board will have a master's degree in social work or a related field. This is becoming more and more the case. Our own experience in dealing with parolees in the community dictates a certain expertise and knowledge in this field. I can appreciate that when they approach a person in the community there may be some questions raised. Generally speaking, I find that before a man or woman is released on parole, when the investigation goes on in the community it does not have this kind of negative feedback when a member of a private agency or a member of the National Parole Board makes a community investigation, that it has when a police officer makes one. All people in society have some questions about being approached by a police officer. It is just the way we have been schooled in society. If a man or a woman has led a useful and productive life, and then one of his friends, or an upstanding citizen in the community, so-called, is approached by a police officer about them, it immediately lends that aura that there is some trouble brewing.

Senator Fergusson: They suspect something which may never have happened. May I ask another question, which has nothing to do with the brief? I was very interested in the paintings displayed last night. I did not really find out how long this has been going on.

Rev. Mr. Libby: We started this national prison art scheme only last year. This is the second one. Last year it was a travelling exhibit, which was judged in Brantford. It opened there and went to nine major communities in the province of Ontario. This year we are planning to travel from coast to coast, to every major city as well as to many of the institutions. We expect this travelling show will take a year.

Senator Fergusson: Have you some of the teachers on it?

Rev. Mr. Libby: No, we do not. The prisons have various kinds of community involvement in this. Some prisons will have people come in from the community and teach.

Senator Fergusson: Voluntarily?

Rev. Mr. Libby: Yes. We hope to encourage this process in the future.

Senator Fergusson: I think it is a tremendous project. Last evening I was talking to at least one who had done some of the pictures, and I was greatly impressed by what the project must do for them.

Rev. Mr. Libby: I think it does help a great deal in regard to their own attitude.

The Acting Chairman: Would you have former inmates working for you?

Rev. Mr. Libby: Yes, we have one former inmate, who has been out of trouble for a number of years. He is a very solid member of Alcoholics Anonymous. This is in Windsor. We have found that he has done an extremely positive and productive job.

I think the goal is to have more and more former inmates. After all, if we are progressing and are asking society to accept former inmates back into the community, then we should demonstrate that fact. We feel that in many cases former inmates have more to offer than the typical person we have in society, regardless of his educational level.

The Acting Chairman: I notice you place great emphasis on doctoral degrees. Would you say that the former inmate would have adequate training to do as good a job as the doctor of philosophy, for example?

Rev. Mr. Libby: In many cases he would be better. It becomes almost an individual thing in terms of his interaction. Of course, some inmates who have made it feel that everybody else should make it to the same degree, or even better, and they tend to develop more of an inmate-societal attitude, and that is not particularly the kind of person we want. We want a person who has made it, but who has demonstrated that now he will help other people along what is a very difficult course in society. No matter how many changes we make in the administration of justice, at best we expect a former inmate to demonstrate clearly that he is reformed and is ready to take his rightful place in society.

The Acting Chairman: It seems to me there is a great barrier between society and the inmate and former inmate. We are just not crossing that barrier. There is an undeclared war between those people and us, and we just do not seem to be making any headway in breaching the barrier. I have a letter here from a young inmate. You may have met this type of situation before. This letter indicates that the inmates are just not interested in our agencies. I am sorry to say it, but that includes the Parole Board's intercells. This is the barrier we are not crossing. The inmate on release has numerous difficulties—primarily, character defamation, psychological

defects, financial instability accompanied by other difficulties that are quite easily overcome. Where can he go to receive help? He most certainly will not go to an agency composed of social workers. Why? There are many reasons for the average ex-convict, but the prime one, according to this letter, is the existing barrier. He is not adjusted to facing reality accompanied by its responsibilities. Nevertheless, at his time of release he has sincere and positive intentions.

However, the inmates just are not prepared to go to you or us or our agencies.

Rev. Mr. Libby: Of course I have heard that sort of argument verbally. All of us in social agencies have. Often it is true; sometimes it is not. There are people who are most anxious to get help. There is this kind of sub-cultural theory inside the prison: "Don't trust anybody, particularly those professional do-gooders who make money off us. They are even worse than the do-gooders." One chap said that, "Without us, you would be out of a job." I said that that would be good; that we would be all too willing to give up and go into something else. But that feeling naturally exists. I agree that there is this great gulf.

Through its governmental agencies, particularly the Department of the Solicitor General, society has over the last few years been talking more and more about, and preaching almost exclusively, community involvement, and yet I see very little evidence that the government agencies are moving into real community involvement. The private agencies naturally have a much better opportunity to do that, whether the private agency be the John Howard Society, the St. Leonard Society or any other.

I see no reason why the Canadian Penitentiary Service itself, the National Parole Board and others could not begin to involve ordinary citizens in their work. These agencies do not have to be exclusively wrapped up in the legal definition of what a parolee or an offender is. We are releasing more and more people to go into school and interact with the community, but why send them to prison in the first place? That is my question. In my estimation, most men and women serving time in penal institutions in Canada today could better serve their time in communities under some kind of supervision, varying from close to very unstructured supervision. They would benefit far more there than they would in a penal institution.

There are many alternative ways of punishing, if that is what we are after, and there are many alternative ways of habilitating.

The Acting Chairman: I agree with you. We spend a lot of time talking about what we should do, to the point of using clichés, and yet what we are actually doing is contained in this bill. Here we have been given an opportunity to show the change of attitude that we have been talking about. We could show that change of attitude in this new act and in the administration of it, but unfortunately we simply go right back and say to the inmates that we are not ready to accept them without having

another really good look at them. We talk, but, so far as practical demonstration is concerned, we fail.

Rev. Mr. Libby: I have often said that in my opinion the inmate needs habilitation, not rehabilitation. You do not rehabilitate someone who has not been habilitated in the first place. Society is the group that needs to be rehabilitated.

The Acting Chairman: Father Libby, it seems that Canada puts more men in prison and keeps them in prison for longer periods of time than any other nation. We are putting more in as we progress. Why? What is wrong?

Rev. Mr. Libby: I have heard this question discussed. In fact, I have read on it. It must be that the judiciary find this the simplest way of handling those who appear before them. Or perhaps we have lacked the alternative community resources available, although I think they are there in many ways now. We have in Ontario a fairly adequate probation service, although it could have a larger staff, but I sometimes wonder if our judiciary really search out all the alternatives to imprisonment that are available in the community.

Senator Fergusson: It seems to me that there are many communities in which there do not seem to be any alternatives.

Rev. Mr. Libby: There are often alternatives in terms of the people in the community. Perhaps in the initial stages it would require the judge himself taking some interest in organizing a small group of citizen volunteers. It may not be perfect, but it is very often better than the present system of undoing the damage. As it is, we produce more criminals in prison. We set more people back than we tend to push forward, because we give them this negative experience of incarceration.

Senator Fergusson: Father Libby, you were speaking about the houses in operation and you said there was one women's house.

Rev. Mr. Libby: Yes, we have one in Windsor called the Inn of Windsor for Women. It deals with a little broader field than simply the fields of offenders. Although they have had some ex-inmates, more and more the Inn is being used by the courts as an alternative to imprisonment. That, of course, is something we are extremely interested in. Instead of young girls having to be placed in prison, they can be placed by the courts in that facility, under probation.

The Acting Chairman: You said you had run into a number of situations in Windsor with respect to investigations. How many would you say?

Rev. Mr. Libby: Well, I would say I have known of twenty ex-inmates in Windsor who have applied for a pardon. Beyond simply filling out the application form and then hearing that RCMP officers have been around to see certain persons, I do not know of one individual who has received any word beyond the fact that the RCMP were doing investigations. Apparently the whole

thing is dropped. I understand there are people who have received clearance from a criminal record, but to my knowledge no one has.

The Acting Chairman: Have they been embarrassed at all by these investigations?

Rev. Mr. Libby: I would say that some have been. Three or four have mentioned to me that they thought it was a very poor way of doing it. In one case a man said he wished he had never begun the process and had never applied for clearance of his criminal record. He said he would not have done so had he known that this was the way it was going to be approached. He was doing quite well but he thought this might demonstrate the fact to other people. He said that if he had to go through the same process again, he would never apply.

The Acting Chairman: At our previous meeting Mr. England indicated that they receive many preliminary inquiries which are dropped. It is my view that when he heard of the investigation he just did not bother any further and dropped it. Is that your assessment?

Rev. Mr. Libby: Yes. If a man has been social-worked to death, right through the courts and through the prison system, not necessarily by professional social workers but by all kinds of people, and he applies for and receives parole and does well in that and is free in the community, and then he looks at the application form and sees the whole process is going to start all over again, I think this would act as a deterrent to his applying in the first place. That is all I have to say on that.

At this stage I would like to introduce Mr. Louis Drouillard, Director of St. Leonard's House in Windsor.

The Acting Chairman: We are very happy to have you with us, Mr. Drouillard. Thank you very much, Father Libby. I wish you every success in your conference here.

We now have the representatives of The John Howard Society of Ontario. Mr. Kirkpatrick is with us this morning. Would you care to make an opening statement, Mr. Kirkpatrick?

Mr. A. M. Kirkpatrick, Executive Director, The John Howard Society of Ontario: Honourable senators, in view of your questioning of the last witness, I shall make reference to my brief, as this might anticipate some of your questions.

The general experience that we have had is that there is reluctance on the part of enquirers to make application form that five references must be provided and that a personal inquiry will be made of those referees.

This is not really so much of a problem for men who have revealed to friends or employers that they have a criminal record, or if they feel close enough to tell their story to friends and ask them to stand as referees. In such cases the direct inquiry does not create problems if it is discreetly done by non-uniformed police. In our experience, this has been the case and we have had no adverse comments as to the procedure followed by the police. However, when a man has completely changed his life-style and has successfully hidden a past criminal

record, even from his family, this does present a problem, as he is most reluctant to reveal his past to his friends or business associates for reference purposes.

In our view, in such a situation it would make little difference if it were police, parole officer or John Howard Society representative who made the inquiry of the referee since the purpose would automatically stand revealed. The question would be, "Why are these people making this inquiry? They are all involved with the criminal law and the correctional system."

It is our understanding that the pardon section of the parole service would, in exceptional cases, accept open testimonials or general references and forego the direct inquiry of referees. This practice is to be commended and should be extended. I think particularly of one man in whose case this has been happening. I could probably think of others, but I can just think of one offhand.

It is our view that the man should continue to make application on an individual basis, as this has meaning to him in his reinstatement in society. It would be numerically impracticable to make an automatic review of all ex-offenders at the end of five years, and we believe it would also detract from the sense of achievement and regained worthy citizenship on the part of the applicant. However, we suggest that the application form be changed by removing the initial request for references and that the applicant be requested to appear in person at the nearest district office of the parole service. This would clarify the actual value of the pardon, and through the personal interview much of the necessary information as to the applicant's community status would be obtained as well as providing opportunity for a personal evaluation by the parole service representative.

However, we see no reason why applications, when received by the parole service, should not be referred to the RCMP, who, in consultation with the local police, could determine the status of the applicant in regard to criminal activity. In our view, this should be the extent of the fact-finding process: Is the man still involved in criminal activity or is he clear? That is all they should be doing, not making an assessment of the individual. The local police have developed intelligence squads and are usually in a position to make such an assessment. If there is no question in their mind, then surely the pardon should be granted without any further investigation. If they have proof of criminal activity or reservations as to good citizenship, the applicant should be faced with this information and given an opportunity to discuss the matter with the police and the parole service. Then, if he satisfies them, the pardon should be granted. In doing this, he should be allowed to give references, if he wishes, or to supply open testimonials and proof of employment and acceptable citizenship activities.

Such a procedure would almost entirely obviate the need of personal interviewing of referees, except with the applicant's knowledge and consent, and then only as a last resort. It would obviously relieve the fears of many would-be applicants and encourage them to make use of this symbolic reinstatement in society.

What is the purpose of this pardon in the mind of the man or woman? Some view it as a practical thing

because they want to obtain visas to the United States or other countries. However, the serious question, in fact, is whether such pardon would be accepted for visa purposes, certainly in the United States. Others view it as a means of getting a job, for job applications, and they are prepared to use it in that regard.

Of importance is the fact that most people do not want to reveal, by using the pardon, that they have in fact committed a criminal offence. The very fact that a man says, "I have been pardoned", infers that he is saying "I was an offender. I did commit a criminal offence." Therefore, most people are not prepared to admit publicly that they have received a pardon. A pardon is a private, personal document.

A number of people want this—particularly two general groups of persons. Of one group is the person who has committed one serious offence, maybe early in life, and who feels that the pardon is a recognition of atonement for what he has done. The other is the repeater who, after a lifetime of crime, is anxious to have a piece of paper in his possession which finally says he has made it as a "square John" and has left the "rounder" class behind. This is evidence to him that he has really made it in society.

These are valuable, emotional, factors in the pardon. However, from a practical point of view we feel there could be a change in the act.

Our brief addressed itself only to the actual investigative procedure. With your permission, I would like to make a couple of comments on the act, if that is within the scope of your inquiry.

One of the important questions concerning the act is the word "vacate". In the opinion of many persons, this does not go far enough. I suggested to the former Solicitor General, when he was considering the matter, that we should use, instead of the word "vacate", the phrase "makes null the conviction in respect of which it is granted, so that he will be deemed henceforth not to have been convicted".

This would have a much firmer effect in regard to industrial employment application forms and in securing a job. When a man applies for employment, very often on the employment application form the question is asked, "Have you had a criminal conviction?" or, "Can you be bonded?"—which to some extent is another way of saying the same thing.

The reasoning against the proposal that he be deemed not to have had another conviction is based, to some extent, on an article which was considered by the Standing Committee on Justice and Legal Affairs in 1967, by a man named Gough in the State of Washington, who believed that there was something objectionable about "legalized prevarication, even though one can rationalize the point by the worthiness of the end. It impairs the laws of integrity by creating a conviction where none is needed".

My response is that the criminal offence is created by legislation of the Parliament of Canada. What we legislate as a criminal offence, with its consequences, the

Parliament of Canada should have the right to "unlegislate", if it so wishes; and if the Parliament of Canada wishes to say that a pardon "makes null the conviction in respect of which it is granted, so that he will be deemed henceforth not to have been convicted", the man then has the right to say on an employment application form in response to such a question, "No." Then, if it is later discovered by an inquiry of the firm and the man is called in and is told, "You falsified your application," he can say, "No, I did not, sir. I have a pardon," and he can then quote those words. Therefore, he cannot be fired, as he so frequently is today, for falsifying his employment record.

I hope you will give consideration to this question, because I think it is vital if a pardon is to be an instrument of any real value on the employment market.

The second question that I raised with the former Solicitor General was with regard to revocation. Provision is made for revocation if the person is no longer of good conduct. I think that is wrong, because the pardon was for an offence or offences in the past and should not be revoked on the basis of a subjective judgment of poor conduct. A conviction for another offence would carry its own penalty and the offender would start again on a new time sequence to endeavour to earn a new pardon, if that were his desire.

However, I fully agree with the other provisions for revocation regarding false or deceptive statements made in the pardon application. I think that is desirable.

I would now raise two or three points about procedures. The first is that they are taking a great length of time to process; it is equivalent to that of human gestation, eight, nine months. I do not really see why it should take so long to create an inert document. The reason is that there has been a tremendous increase in the number of applications for pardon coming to the pardon section of the National Parole Board.

Your committee might very well concern itself with the need for that section to receive support in the processing of these applications, because it is very destructive to the individual, who has made an application in good faith, to be kept waiting for months and months on tenterhooks before knowing whether or not he is going to make it. As your inquiries might show, this delay is probably due to a serious lack of staff. I understand that the gentleman who was working on these matters in that department has left and been replaced by two summer students. I do not consider this to be adequate for such an important matter.

Another provision which causes delay is section 4(5) of the act, which now states:

—the Minister shall refer the recommendation to the Governor in Council—

Formerly it was referred to the Governor who, in his Letters Patent, has the power to grant the pardon. I am informed that reference to the cabinet creates a delay of a month or more in the total process of issuance of the

pardon. Your committee might consider this particular aspect of the act.

I do not think there is anything I wish to add to my statement, but I shall be pleased to answer questions.

The Acting Chairman: Thank you very much, Mr. Kirkpatrick.

Senator McGrand: I must explain my late arrival this morning. When we met on June 1, we decided to meet at 2 p.m. today. How did we come to meet at 9.30 a.m.?

The Clerk of the Committee: Because the witnesses are in Ottawa attending a conference.

Senator McGrand: Was I notified that we were going to change the time from 2 p.m. to 9.30 a.m.?

The Clerk of the Committee: Notices were issued.

Senator Fergusson: I think the Chairman should have been consulted, not only notified.

Senator McGrand: That is all right; we will allow that to pass.

I have read this brief very carefully. Twice you mention that you do not see much difference as to who checks on these men on parole, whether it be the RCMP, the local police or other authority. Police are identified only with the enforcement of the law. Having carried out their duty in the apprehension of a criminal and bringing him before the courts, they are finished with the case. A person on parole should not be in the custody of the police. The Parole Board has released him and the matter of those who check on his conduct while he is on parole is not a question of law enforcement. In addition, a man on parole and applying for a pardon anticipates that he is a free man, living in a free society and not under the eye of the police.

Your brief twice states that you see no objection to this situation. Will you tell me why that is so, in view of the fact that so many people do have an objection?

Mr. Kirkpatrick: I think there is a misunderstanding on your part. These men are not on parole. The act provides that there must be an intervening period of five years from the completion of sentence for an indictable offence. Therefore, the man is on parole only until the completion of his sentence. Following that there is a lapse of five years, during which he is free. He is not "free" while on parole, but is continuing to serve his sentence out in the community. Part of his obligation is to report to the police as well as to the parole supervisor. Therefore we are not discussing the situation when a man is on parole, but the pardoning process, when he is in fact a free man and has been for five years.

Senator McGrand: Is the error not in the fact that he has to report to the police? Is that not a weakness in the law? These men should not have to report to the police after they have been brought before the court.

Mr. Kirkpatrick: That is another question; he does not have to report to the police with regard to anything following the completion of his time on parole. We are

discussing an entirely different set of circumstances, with respect, sir. Our feeling is that if a man or woman has been free for this length of time and has built up social and business relationships in the community, no matter who makes the inquiry, if they are connected with the correctional system it will have the same effect. People will ask, "Why is The John Howard or Elizabeth Fry Society inquiring about Joe?" They are part of the correctional system. They will wonder if Joe has a record and will say that they did not know he had been in jail.

Therefore it does not matter whether it is the police, The Elizabeth Fry Society, The John Howard Society or the parole service. This question will start to fester in the mind of the person who was the referee. That is why we suggest that, except in ultimate cases, this approach of interviewing referees be omitted altogether. We do not think anyone should, except in ultimate cases with the man's final consent, interview referees.

Senator McGrand: At the conclusion of your brief you mention the case of a first conviction and a subsequent second conviction. I just cannot remember the words you used.

The Acting Chairman: A recidivist.

Senator McGrand: The first offence is dealt with; he may have a second offence, which must also be dealt with on its merits.

Mr. Kirkpatrick: That refers to section 7(b)(i) of the act, which concerns itself with revocation, and provides that it can be revoked if the person to whom it was granted is no longer of good conduct.

Senator McGrand: That is the word.

Mr. Kirkpatrick: I consider this to be wrong. The pardon was not granted on that basis, but in respect of an offence. If he commits another offence, he starts over again at square one. He has to complete his sentence, and another five years must elapse before he may make another application for pardon.

Senator McGrand: That is what I had in mind, because with the public, the police, The John Howard Society and society in general the first offence is associated with the strong possibility of a second offence.

Mr. Kirkpatrick: The pardon is granted on the basis of five years of crime-free activity and good conduct, no matter how many previous offences the man may have committed. Therefore, as long as he does not commit a subsequent offence he is not in jeopardy of losing his pardon. If he subsequently commits another offence, automatically he starts all over again.

The point I make is that under section 7(b) he should not lose his pardon if it is decided subjectively that he is no longer of good conduct. Should he commit another offence, as you suggest, he should lose the value of his pardon.

The Acting Chairman: Just one question from your brief, Mr. Kirkpatrick, wherein you state:

"It has been our general experience that there is a reluctance on the part of inquirers to make application when they see on the application form that five references must be provided and that an inquiry will be made in person to the references."

Why is there a reluctance?

Mr. Kirkpatrick: Because this will reveal to their social or business associates that they in fact have a criminal record. Otherwise, why would be the RCMP be coming around?

The Acting Chairman: But they are assured an allegedly discreet investigation.

Mr. Kirkpatrick: That is true. We have had several cases in which we assisted an applicant with his application, in which the name of our worker was allowed to stand as a reference and our worker was interviewed by the police. It was very discreet indeed, but obviously we knew that there was something involved and we knew what the purpose was. If this had been you, for example, you would have asked, "Well, why are the RCMP asking questions about Kirkpatrick? There must be something funny here." So that is why we suggest that this interview process be cut out entirely, except as a last resort, if the police, the parole service and the applicant do not reach agreement. In that instance he says, "Well, all right, you talk to my friends. I will give you their names."

I should have said, for the record, that we have handled between fifteen and twenty requests a month in our various branches since the act came into force. This is a substantial number, and not all of those have made application. I could not tell you how many have or have not made application, because I do not have those figures.

The Acting Chairman: When you say "handled," you mean you assisted in preparing—

Mr. Kirkpatrick: We answered their inquiries, and we actually interviewed many and told them about it.

The Acting Chairman: And assisted them in applying?

Mr. Kirkpatrick: Yes, and assisted them in applying. In the case of some we actually helped them fill out their application forms. Annually we deal with over 150 applicants for pardons, so it is a substantial number.

The Acting Chairman: In other words, you contend there is no such thing as a discreet investigation when it comes to investigating these people?

Mr. Kirkpatrick: Well, if you receive a credit inquiry about a friend you wonder why—"What is he going to do? Is he going to take a mortgage? Is he going to buy a car?" However, you do not hold this against him, because it is a credit inquiry which you accept. On the other hand, if The John Howard Society came to inquire about your friend you would say, "Well, why is The John Howard Society concerned with my friend? There must be some reason. I wonder if he has a criminal record or has been in jail?" And so you start that process, and your relationship with your friend becomes involved. We think

that this process is completely unnecessary and, if I may say so, that it is probably one of the important factors involved in the delay in processing pardons.

The Acting Chairman: I understand from the Commissioner that there are 600 completed applications.

Mr. Kirkpatrick: There are very few coming out.

Senator McGrand: You mentioned that certain people want paroles, that they want pardons and would like to go back and be a "square John" again—you used that expression—and forget about the "rounders" they had been. From your vast experience, Mr. Kirkpatrick, how many of these people who have been offenders against the law, who have served their prison sentence and who have qualified to the extent that society will take a chance on them, are actually repentant in that they have convinced themselves that they did something wrong and that they will never do it again? Alvin Karpis served a long term in prison. He was released and is now living a life that is supposed to be "on the square." He has written a book and says he would do the same thing again if he had the chance.

The Acting Chairman: He has no regrets.

Senator McGrand: He said, "I do not feel one bit guilty about anything I have done." The income tax evader who gets caught and who pays a penalty by way of a fine is not usually repentant. He just says, "My bookkeeper was not very good." I am just trying to relate these two things. Can you give me any help on this?

Mr. Kirkpatrick: Anything I could say about the state of mind of another human being would be pure conjecture. A substantial number of men and women with whom we deal have every intention of committing no further criminal offence on leaving prison. But with the exception of the middle-class offender—the income tax evader or someone of that sort—what we are asking most people to do is to change their whole values system and their former social associations. This means creating an entirely new life style. We do not have to do this in any other area of our social or health services. In our mental health services we try to strengthen the person's values system and his associations generally. Here we are asking the ex-inmate to create a new environment and a new life pattern of thought, of emotion and of thinking, so it is no wonder that a large number—particularly in the penitentiaries, which house the final graduating group of our whole criminal process—do recidivate. Would you be interested in the research figures on this, sir?

Senator McGrand: Yes, I would.

Mr. Kirkpatrick: In 1965 Mr. Archie Andrews, of our Toronto office staff, did a study on released penitentiary inmates which included parolees and expired cases from the Kingston area. Of 156 who were released in a time sample over that period of time, 94 recidivated for both indictable and non-indictable offences. Many of them were not serious offences. The incidence of recidivism steadily diminished and approached the zero mark at the end of a two-year period. 44.6 per cent of the recidivism took place in the first six months, and this is why we are endeavouring so hard in pre-release work to prepare the

man for that period and to grab him just as soon as we possibly can following his release. Of those who did recidivate, 75.5 per cent had recidivated by the end of the first year and 97.9 by the end of the second year. So this indicates that little further recidivism is likely to take place two years after release.

We presented this data to the Standing Commons Committee on Justice and Legal Affairs, and I think this was helpful in their timing of the pardoning process—which is for non-indictable offences two years and for indictable offences five years. So we feel that if a man has stayed clear of the law for five years, there is not much likelihood that he will recidivate.

Senator McGrand: You send him out to look for a new environment to live in, and if he does not find it in the first six months or year, he is liable to get into trouble again. The first six months or a year is the important time.

Mr. Kirkpatrick: That is crucial.

Senator McGrand: That is when he has to rebuild his environment.

Mr. Kirkpatrick: That is crucial. You are quite right.

The Acting Chairman: Don't we make it almost impossible for him to find that new environment?

Senator McGrand: That is the trouble.

The Acting Chairman: As you said, they all come out of the institution ready to go straight and become "square Johns," with the best of intentions, but we are not ready to accept them with equally good intentions.

Senator McGrand: That is why I say that he wants to be a free man in a free society but just does not know how, and he thinks he is being chased, not aided.

Mr. Kirkpatrick: Can I answer your question in part sir, by citing another statistical inquiry? A few years ago we made a survey of employment forms. Of 67 forms that we were able to secure reasonably quickly: 18 asked, "Have you had a criminal conviction?"; thirteen asked, "Can you be bonded?" which is another way of saying the same thing; twelve asked, "Have you ever been refused a bond?"; 49 asked for the employment history, which is natural enough, but in the history of course, is the gap in the work time. One man succeeded in getting a job because he said he had been working for the Department of Justice for five years! He wrote me quite gleefully about that afterwards.

This indicates the assumption in society, that we have to fight so hard, concerning the total restoration of the ex-inmate. I have formerly used the phrase that when a man leaves prison he begins his second punishment.

The Acting Chairman: Which is worse.

Mr. Kirkpatrick: It can very well be, because he then has to maintain himself in a competitive, economic and social society, whereas in prison he has been maintained by the prison authorities. He suddenly comes out and finds himself with all the burdens of a free individual,

whereas he has not been able to exercise that kind of responsibility for perhaps two, three or even five years. Your point is very well taken, sir.

Senator Fergusson: On page 2 of your brief you suggest that the application form be changed to remove the request for references, and that the applicant be requested to appear in person at the nearest district office of the parole service. It seems to me an excellent idea. I wondered whether you had taken it up with the Solicitor General. Have you made that suggestion to him in your correspondence or conversations with him?

Mr. Kirkpatrick: No, madam, we have not. We made it in our correspondence, at Senator Hastings' request. Beyond certain comments made to the former Solicitor General, we have not made any subsequent comments, because the matter of procedure has just been developing, as you yourself have found out. There is a problem, and we had been thinking about it at the time you asked us to comment.

The Acting Chairman: Mr. Street, the Chairman of the National Parole Board, said they had never given consideration to this aspect.

Senator Fergusson: I am sorry. I have not been able to attend the meetings of this subcommittee before.

The Acting Chairman: I would like to discuss that one man with you, if I may. I do not want you to divulge who he is. Could you tell me something about the man?

Mr. Kirkpatrick: He is a long-term offender who has made a very good recovery. I do not know specifically what he is working at, and you would not want to know that anyway.

The Acting Chairman: No, I do not want to know that.

Mr. Kirkpatrick: Over a period of years he has shown a serious change in his whole life style, and we feel quite confident. Among the associations that he now has it is not known that he has a record, and he did not want to give these references.

There is another ex-offender, with whom I have a very close relationship, who very much wants to apply for a pardon. I go fishing with this man, although that would not be the reason for a pardon! He is desperately afraid, despite my assurances, that something might arise that would get back to his mother, who is now rather aged. He is afraid that this might revive in her mind all the past trouble and difficulty he caused her when he was a young man. Despite the fact that he could provide five referees who know of his former criminal activity and his present way of life, he still will not take a chance. That is why I feel these references are not necessary. With respect, sir, I think it could be determined—and there is a gentleman here who might help you to determine it—that the investigative process consumes quite a bit of time. You could ascertain this.

The Acting Chairman: I have no quarrel with the procedure that was used with respect to this one man. In fact, I think it is excellent. I just wonder why he received

this treatment. Why cannot all applicants receive the same treatment? Why should this man receive this consideration?

Mr. Kirkpatrick: He is a man who is well known; he is well known to the national parole service, who know intimately of the success he has made following the termination of his parole. In this case they were prepared to do this. There may be other cases that I am not aware of in which this has been done also. I would not be surprised if it had been. I was using this illustration merely to indicate that the national parole service officials are not hidebound in this regard, that they do use judgment and apparently are prepared to do so.

The Acting Chairman: I just wish that they would use it more extensively.

Mr. Kirkpatrick: They may do so. I do not know.

The Acting Chairman: Perhaps we could encourage them to do so.

Mr. Kirkpatrick: As I said, in my opinion this practice should be commended.

The Acting Chairman: Whatever this man has done to rehabilitate himself, I think they should all receive the same treatment. If this man, who is prominent, gets this consideration . . .

Mr. Kirkpatrick: No, he is not a prominent man.

The Acting Chairman: . . . a man who becomes a carpenter . . .

Mr. Kirkpatrick: Let me correct that. This man is by life standards not a prominent individual. He is a blue-collar worker, just a "Joe". Both men I am talking about are just "Joes"; one happens to be a good friend of mine.

The Acting Chairman: Would you care to tell me from your experience how many men out of, say, a hundred, who are successful have to do it by hiding their past?

Mr. Kirkpatrick: It depends a great deal on the area of life in which the man is involved. If he is from a middle-class group—the lawyer who has been in trouble, the absconder or the embezzler—and his crime has attracted a great deal of public interest, obviously this will be known by his associates and cannot be hidden.

There is quite a number who have received particular publicity, who go to other communities and form a new set of relationships in which this is not known. These men would greatly fear any revelation, or any exposure to their social and economic associates.

The Acting Chairman: You said "a great number". Is that the majority?

Mr. Kirkpatrick: No, I think that would be the minority. The majority of those men who go to prison and whom we deal with, are from the blue-collar class or the unemployed. Many are young men. Unfortunately, many are below the age of 21. Probably 22 or 23 per cent of the men in the penitentiaries are below the age of 21. When

they come out many of them are too young to have gained any employment skills, and this creates another problem in regard to re-establishment. This group has lived in a kind of environment where going to prison is something that just happens occasionally. With their associates it would not, in too many cases, make a difference. However, many of them move to other communities and, here again, the exposure will be just as real, because they have every emotion that everybody else has. So, in answer to your question, I would say that we have fewer people from the middle class, the white-collar group, but that the majority of men would have changed their life style and would have a serious question about revealing their past.

The Acting Chairman: Thank you very much, Mr. Kirkpatrick, for giving us of your time. We wish you success with your conference.

Honourable senators, we now have Miss Phyllis Haslam of The Elizabeth Fry Society. You should have been first, Miss Haslam, and I apologize to you. Do you wish to make an opening statement?

Miss Phyllis Haslam, Executive Director, The Elizabeth Fry Society of Toronto: Mr. Chairman and honourable senators, briefly I would like to say that I work with a women's after-care agency that is very much like The John Howard Society only our primary interest is with the woman offender.

First of all, we work with girls and women who come into conflict with the law. We help the community in general, and our members in particular, to get a better understanding of some of the reasons why people get into trouble. We also deal with some of the procedures that have been used in various cases—some more effectively than some of the ones we use—to help the individual become established happily in the community. And, where appropriate, we take action with various levels of government to bring about changes in legislation in the kinds of facilities we have, and so on.

We were pleased to receive your invitation to appear before this committee. I have tried to put down some of my thinking about this in the statement which I sent to you.

Our own experience has been limited. In fact, while I know of three or four women who have applied for a pardon, only one has had this completed. However, in preparation for today, I talked with a lawyer who had quite extensive experience in this field, and he helped to clarify some of my thinking as well.

I would like to stress the tremendous importance it has to a woman who receives a pardon. In a number of instances, the importance to a person of receiving the pardon—which is not something that you put up on the wall—is the sense of feeling free of the weight which society has laid on her shoulders, caused originally through her own activities. This is something which those of us who have not had this experience find it difficult to realize and appreciate.

It brings to mind a real concern about this sense of guilt which we tend to reinforce and reinforce and reinforce in the person who has been caught. Many of us have committed offences. I have heard some of my friends boast about the way they have committed offences—for instance, bringing things through customs, breaking speed limits, drinking and then driving. They boast about it, because they have not been caught. Once a person is caught and is found guilty, we tend to say to that person, "You are very much a second-rate citizen".

On the point Mr. Kirkpatrick made, where a person has received a pardon for an offence which happened oftentimes then years before and then does something else which is not approved, people begin to say again, "You are not any good. We always knew you were not any good". By inference, that is what this law is saying.

I have tried to indicate a division here, in the investigation area, between the straight, factual situation regarding a person having committed another offence or not, found guilty of another offence or not, and the character aspect.

I am always at little leery about things which say that a person must be "of good behaviour". What is good behaviour for me certainly is not good behaviour for many of my friends, and vice versa. A term like this has little significance. Unfortunately, so often we tend to expect of somebody else, in a situation like this, behaviour which is far in excess, in terms of correctness, of that which we expect of ourselves.

With that opening, if there are questions, I shall be glad to answer them.

Senator McGrand: I understand a great many of your women in prison are serving a term for drugs. How many prisoners do you have who are mothers who have the battered child syndrome?

Miss Haslam: Very few.

Senator McGrand: What is the crime of the largest number?

Miss Haslam: One type of offence for which women get into custody is being found drunk in a public place—and oftentimes, of course, they are picked up for being in a public place because they do not have a home because they do not have the capacity to get money to have a home. Others are picked up because of vagrancy, a prostitution charge. This is a law which discriminates against the poorer prostitute, and the community tolerates a great deal of misbehaviour in terms of sexual offences. The third group is people charged with theft.

Senator McGrand: Shoplifting?

Miss Haslam: Sometimes shoplifting, sometimes petty theft. Again, one of the questions we raise is that of a person who perhaps has stolen an article worth 25 cents and has to wait five years to be considered for a pardon.

In the discussion this morning, because the three of us who have spoken are particularly interested in people coming out of prison, we have tended to concentrate on the person who has been in prison and therefore proba-

bly has committed a more serious offence, particularly in the case of the men, because the penitentiary is a large source of their intake. I think we also need to realize that this applies to the person who is found guilty of a very minor offence and is fined or is placed on probation, or even on suspended sentence without probation. Our own Society also tends to work more with the person in custody, and that is the group.

Senator Fergusson: Miss Haslam suggests that for someone who has committed a very minor offence the time limit of five years seems inappropriate. On the other hand Miss Haslam suggests that it is regrettable that no provisions have been made to grant a pardon to a person who has been given a life sentence.

Miss Haslam: It is recognized that there are people who have committed murder or manslaughter and have received, in consequence, a life sentence. In a sense the sympathy of the court, and sometimes of the community, is very much with that person. There may have been a great deal of aggravation leading up to the crime, and so on. If a person receives a life sentence, he cannot be considered for a pardon until five years after the end of the life sentence. That does not really help the person very much at that time. We wonder whether there might be some consideration of pardon for a person who, in his teens, has committed an offence which incurs this type of sentence, but who has since continued to live a very productive and helpful kind of life. We feel it is unfortunate that that person should never have the satisfaction of feeling that society is now saying to him, "We now consider that you have atoned for your crime."

Senator Fergusson: In other words, there is nothing to look forward to.

Miss Haslam: No.

Senator Fergusson: Miss Haslam, do you agree with Mr. Kirkpatrick's statement that recidivism mostly takes place within six months to two years?

Miss Haslam: Certainly, any studies that have been done tend to support his statement.

Senator Fergusson: In your own experience you would not have any figures, I suppose.

Miss Haslam: We do experience some recidivism, senator, but I do not have any figures. Very often a woman who commits an offence does so under pressures which she has to learn how to handle in ways that do not involve crime. Sometimes you get a person who, for instance, is finding it very difficult to handle loneliness and who, perhaps, tends to drink excessively. Sometimes a person is very anxious to make a good impression and buys something on time; then she loses her job and does not have the money to cover it and issues bad cheques at that point. Very often a crime which takes place some time after the person has been getting on relatively well does seem to be tied up with an emotional situation—at any rate, so far as women are concerned. If the person can get help—and that help may be by being able to talk it out with a friend, or by coming back to an agency such

as ours which can help her to look at the pressure, why she has that pressure and how she is handling it—then the probabilities of additional offences are removed.

We do find that sometimes a person who has been doing very well in society for quite some time will suddenly revert to, for example, excessive drinking. This can be occasioned by the death of a close friend or relative on whom she has relief for emotional stability. With the absence of the emotional support the person may tend to run away from reality, leaving children, for example, and drinking to excess.

There are a variety of ways in which persons express the pressures that they are subject to. Some of these ways are acceptable to our community; some are not.

With respect to the question about battered children, we very seldom get a woman in on an offence involving a battered child. We do from time to time have women in for neglect of children. Our own belief is that so often as a community we tend to judge by the end result, without having any kind of understanding of what has come before that end result.

If I may take the time, I should like to tell you of the experience of one family which will illustrate the sort of thing that happens.

A young family living in a community was chosen by that community as the family giving best leadership in the care of children. That family was chosen by the community group. Unfortunately, after a short time, the head of the family became ill and lost his employment. The family then went on to welfare. Incidentally, this all happened about ten years ago. Some time after the family went on welfare the woman became ill.

For those of us who have never had to live on welfare, it might be difficult to understand the sort of situation in which this woman found herself. The strain of attempting to keep up, on welfare, the standards that she had previously maintained made her ill. On welfare she was in a home where there was no hot water and where there simply was not enough money to buy soap. So her clothing and her children's clothing tended to look dirty, even though she was constantly washing it and trying to clean it. The children were constantly hungry, as were the parents, of course. The husband was supposed to have a special diet, but there was not sufficient money to get the diet. Add to this the constant whining of the children and the various pressures of just never being adequately housed or fed and having little recreation, and you will understand why the deterioration in that family became more noticeable and why the mother's health failed.

The deterioration continued, and largely owing to the bad health of both parents, one evening the parents, I think just to get away from it all, left the children with a young neighbour and went out and got drunk. They were picked up. They were charged with neglect of their children. There was little question that there was neglect of children, but I think one might well ask, "Whose neglect?"

The woman appeared in custody, as did the man, and the children were removed from them. After they got

out—and their health had been built up in a period of custody—they came together again and the children were returned to them, I am happy to say, and they were able to carry on successfully in their home.

That is the kind of situation which sometimes occurs as a result of pressures which we, as a community, put on people. And then we go on holding them entirely responsible. Certainly, they must face up to their responsibilities, but as a community we need to face up to our responsibilities too in producing the offender.

The Acting Chairman: Miss Haslam, you have heard the evidence of Mr. Kirkpatrick. He states that there is not really such a thing as "discreet" investigation, whether it is done by your society, by The John Howard Society or by anyone else. Once a person is investigated, rumours are triggered with respect to that individual. Would you agree with that?

Miss Haslam: I certainly like Mr. Kirkpatrick's suggestion with respect to the handling of this situation. It is excellent. I had rather an amusing experience of having the RCMP come to question me about a young woman. Interestingly enough, the RCMP did come in the daytime and they did come in civilian clothes. The story I was given was that this person was applying for a job which involved a security rating. After two or three minutes I said, "You know, I do know this person gave my name as a reference for a pardon, and perhaps it might be easier if we just talked on that point." I think it would be very difficult to hide the fact. We certainly advise the people who have come to us about this that if they are going to give references, then they should discuss with the person whose name they give the fact that they are applying for a pardon. I think it is almost impossible, whoever does it, to get the kind of information which might possibly do some good. But again, as I have indicated, this comes back to the question of what we are attempting to find out.

The Acting Chairman: Well, getting back to what you said about its being best to discuss the matter with your referees, if I were an individual—and I suppose the same situation would apply to a woman, or to the great majority—who had hidden my past, and if I went to discuss this with my referees, which would mean exposing my past, then I would be either reluctant to apply for the pardon, or I would be in the embarrassing position of exposing a past which I had successfully hidden.

Miss Haslam: Yes, and I think that is the reason why you will find in most cases people use as referees people such as The John Howard Society and The Elizabeth Fry Society, or they will give a police officer or their priest with whom they have very often talked, or they will get in touch with the minister in the institution. To me this may automatically trigger off a reaction on the part of the person doing the inquiry and he might say, "Well, the only people they seem to know are those connected with the criminal world. Perhaps these are the only people they know." In fact I think this is not the reason; they give the names of these people only to protect themselves.

The Acting Chairman: And, of course, the investigator is not confined to the five references he has given. He can go and make inquiries anywhere he wishes.

Miss Haslam: I did not realize that.

The Acting Chairman: He is not confined to those five people. I could give the names of five people and discuss the matter with those people and say, "This is the situation," but the investigator can go wherever he feels like going and discuss it with anyone he wishes to discuss it with in order to ascertain my behaviour.

Miss Haslam: I was not aware of this, and if this is so, then I would strongly advise people against applying for a pardon.

The Acting Chairman: Do you have any knowledge of people not applying for a pardon because of these investigations?

Miss Haslam: They have not stated that this is the reason they have not applied, but we have had people telephoning and inquiring as to whether we had application forms. One of the questions the lawyer brought up is that it is sometimes difficult for a person to figure out where to get the application form. But, as I say, they have called and asked us about this and have said that they would come in to collect the form, but then they have not come. I think this certainly may have some significance, because if a woman is now married and established in the community, she probably is not prepared to jeopardize that security.

Senator Fergusson: Miss Haslam, on page 2 you have said that you would be prepared to discuss the need to let people know how to obtain an application for pardon. This strikes a very familiar note with me, and I know it does with Senator Croll, because when we were on his Poverty Committee we were told many times by many people that while there were many things that people might be entitled to, they do not know they are entitled to them and even if they know they are so entitled, they do not know where to go and ask about it. Can you say a few words about that?

Miss Haslam: Well, in speaking with this lawyer, who I understand has been particularly interested in this, he said that their greatest number of requests come from people who say, "I would like to get a pardon. I read about it in the paper, but I don't know how to go about it." He said he had inquired around, and people did not seem to be too familiar with where to get the information as to how to go about it. Of course, once he found out it was through the Parole Board, then it was fine. His suggestion was that there could be papers in places like post offices, where you can get other kinds of papers. There was also a question as to whether, when a person receives a sentence, he or she could be given a slip indicating that he or she could apply for a pardon from the Parole Board.

Senator Fergusson: But that, of course, would only apply to people from now on.

Miss Haslam: That is true. I think perhaps they could read it in the papers, but it would need to be in a variety of papers.

Senator McGrand: Has the rising cost of living and subsequent poverty in certain classes, in certain areas, led to an increase in crime among women?

Miss Haslam: I think that where it affects women particularly is in the advertising that goes about. So often the woman who gets involved in crime is a person who feels that she does not belong. She reads in the newspaper and sees on television that if only she had the right kind of this or that, then she would be more popular. She is anxious to have friends, and sometimes she sees a way of getting friends by giving them gifts that are more expensive, but then she has less money and cannot afford them. The pressure of not having money is one of the things that intensifies a sense of difference, and therefore a person is more likely to drink excessively, and so on.

Senator McGrand: Then there is the case of men who run away and leave their families, do you find that that is a big contributing factor to crime?

Miss Haslam: If the woman is looking after children, we do not find that too often she gets into custody.

Senator McGrand: But oftentimes the amount of money they get on welfare does not meet their demands or obligations, and then they try to get a little extra money somewhere else.

Miss Haslam: Yes, I think this certainly happens to an extent, but it is amazing the number of women who do not do this.

Senator Croll: There are four prominent members of the Poverty Committee in this room and on this committee, so I want you to know that we know something about this. You have been in touch with women for many, many years. Has it ever occurred to you to say to a woman, "I think it would be a good idea for you to apply for a pardon"?

Miss Haslam: When a woman comes in to visit us, to let us know how well she is doing and to let us see the very fine husband and the lovely children she has—and this happens from time to time—if she speaks about the fact that she only wishes she could feel that her past was wiped out, then we will indicate to her that there is a way of getting a pardon. I do not work too directly with women at the present time and cannot really speak for my staff, but my belief would be that we would probably not initiate this because of the sorts of procedures that a person has to go through. If a person does not feel this very deeply, then we might not.

However, we do find that if a woman who has applied for a pardon talks with others, usually the others decide they will go ahead and apply for a pardon too.

Senator Croll: If this committee arrived at a different approach to this question of a pardon, do you think there

would be many more applicants? Would you feel that it was incumbent upon you to advise people to obtain a pardon, to let them know that the Government is in a mood to consider it?

Miss Haslam: I think we would be much more inclined to do this if there were proper clarification of "vacative conviction", of what it, in fact, means. We feel that it is practically a meaningless term at the present time.

Senator Croll: Were there many pardons, granted in the last couple of years?

The Acting Chairman: There have been 54.

Senator Croll: In the last year?

The Acting Chairman: No. There have been 54 under the Criminal Records Act in the last year.

Senator Croll: And before then?

Miss Haslam: Practically none.

Senator Croll: Oh, no. My recollection is that there have been many applications for pardon.

Miss Haslam: We do support the view that there is a long wait before anything happens. When you have brought yourself to the point of going ahead with this, it is unfortunate that there should be such a long wait.

Senator Croll: You are quite right on that.

Senator Fergusson: I gather from what you said that a person who is refused a pardon is not given adequate information regarding the basis of the refusal. Have there been cases of people having been refused and not told why?

Miss Haslam: I was not able to find that out specifically. In one instance the answer given was that there was an outstanding charge against a particular person, that had occurred something like twelve years before. The person concerned had a very common name. Let us call her "Jane Smith", which was not her real name.

The offence was passing a bad cheque in a part of Canada in which this person had never been. However, there was another person who had been in the penitentiary at the same time who was a dud cheque writer and who went to that part of the country about that time. The probabilities are that she used this girl's name. The girl in question was told that she could not receive her pardon because of this outstanding charge, and that in order for her to receive her pardon it would be necessary for her to stand trial for an offence which she was certain she had not committed.

I was approached on this matter, because she was on parole to our agency at that point. We were in constant touch with her and everything indicated that she had never left Toronto at that time. However, the alleged offence had occurred 12 years before.

The fact that we who had been in touch with her at that time had no reason to hide anything concerning the woman finally persuaded the authorities that the evi-

dence against her was so slight that perhaps the case should not be proceeded with.

I made personal representations to the Parole Board regarding the matter as I believe did Miss McNeil, and the result was that the woman was granted a pardon.

In a situation like this, it is not too difficult to tell the person. However, we come back to what is considered to be good behaviour. A person may be living common law and the one doing the investigation may feel that this is not quite suitable; or a person may have appeared in court on charges for which she has not been found guilty. All of us recognize that there are times when, if a person has committed a certain type of offence and the police know they are in the district, that person becomes a prime suspect.

There are certain things that one is not likely to bring to the attention of a person. A person giving a reference might say, "Well, perhaps I should indicate that she is pretty unstable, has a degree of mental disturbance." And they then say "Oh, that might lead to further crime." I do not know why they would refuse it. However, it seems to me that if it is going to be refused, a person should know why.

Senator Croll: According to the last page of the proceedings, it indicates, "Pardons granted, 37; submissions awaiting parole, 12." That makes a total of 49. The total number of board decisions under the act was 85. I assume then that approximately 35 were refused?

The Acting Chairman: Thirty-seven have been granted.

Senator Croll: Yes; and I assume that 12 will be granted.

The Acting Chairman: The figures we had at the last meeting indicated that 52 had been granted and two had been refused.

One further question, Miss Haslam. With respect to your answer to Senator Croll—I would like you to correct me if I am wrong—did I understand you to say that you would be reluctant to recommend applications for pardon because of the procedures being used?

Miss Haslam: I would say that if the person indicated that a pardon was important to her, I would bring to her attention the procedure used and would say, "If you can get references from persons who know about your record, and you are not concerned about this, then, if you wish to have this, that is fine and this is how you go about it." I would seriously question saying to a person, just routinely after five years, "I think you had better apply for a pardon."

The Acting Chairman: Why?

Miss Haslam: Those who have applied, think it is important. Regarding the others, I think the risks in dragging up all the unhappiness and having the matter discussed with family and friends is too great a price to pay when the results, as presently stated, do not hold water, as Mr. Kirkpatrick indicated.

The Acting Chairman: Are there any further questions? Thank you very much, Miss Haslam.

That concludes the hearing of witnesses for this morning.

The committee adjourned.

APPENDIX "A"

THE JOHN HOWARD SOCIETY of Vancouver Island
1951 Cook Street
Victoria, B.C.
May 25th, 1971

Honourable Senators:

The John Howard Society of Vancouver Island has long been an advocate of progressive measures to deal with the criminal offender, and particularly, to ensure his rehabilitation in the community following imprisonment.

The Society therefore welcomed the introduction, and passage of legislation, enabling a person with a criminal record to make application for, and receive, pardon upon proof of law-abiding conduct over a period of years following expiration of his last sentence for a criminal offence.

Since the Criminal Records Act was brought into force, the Society has received numerous inquiries from successfully rehabilitated persons anxious to remove traces of a background, of which they have no pride and which, in many cases, remains as a constant threat to their ability to sustain their position of acceptance in the free community.

Many inquiries have exhibited concern and fear over the process of investigation which would necessarily accompany any application on their part for a pardon under the Act. The Society, sensing some real dangers in the event that such investigations were not handled discreetly, felt that clarification should be obtained regarding the procedures taken by the Department of the Solicitor General when an application for a pardon was received.

Accordingly, on April 15th, a letter was written to the Honourable Jean-Pierre Goyer, Solicitor General. No acknowledgement nor reply to this letter has been received to date.

Since that date the Society has been advised of the debate which has taken place in the Senate of Canada on this very issue. It is gratifying to note the members of the Senate agreed that a possible problem exists which merited further, close, examination by your Committee.

Our Society is greatly concerned that responsibility for investigating an application for a pardon has been delegated to the Royal Canadian Mounted Police. Such a task would not appear to be consistent with the normal duties of a police force but more appropriately should rest with an organization whose primary responsibility is the rehabilitation, rather than apprehension, of the criminal offender.

As indicated in the letter to Mr. J. Goyer, this Society has two further major concerns regarding the investigatory process.

First, it is questioned whether or not a direct approach to an employer, unaware of an applicant's previous

criminal record, would jeopardize the work status of such a person. The Society has, over the years, witnessed numerous cases of termination of an employee's services, for one reason or another, when previous criminal activity has become known to the employer. If, in order to substantiate good working habits, it is considered necessary to approach an employer, the Society is anxious to know how such an approach can, and is, being made in those cases where the employer is unaware of an employee's past.

Second, and in a similar vein, it is questioned whether it is appropriate to approach a person or persons, for character reference purposes, unaware of an applicant's previous criminality. What guarantee can there be that the results of such an approach (as in the former case) might not be harmful to the applicant? It would seem virtually impossible for an investigator to make definitive inquiries of any persons, be they employers or character references, without (a) revealing his identity and (b) directly, or indirectly, revealing details of the applicant's past. In both situations, the repercussions could be more harmful than the results obtained.

As it would appear difficult to guard against negative repercussions of approaches to persons unaware of an applicant's past it might be questioned whether direct approaches should be made, irregardless of the investigator's role in the community (R.C.M.P., Parole Officer, etc.).

In view of the fact that considerable emotional effort is spent by the ex-offender in repressing the past, it would appear to the Society to be inconsistent with the spirit and intent of the Criminal Records Act if the investigatory process was conducted in such a manner as to place the pardon applicant's status in the community in jeopardy.

Accordingly, The John Howard Society of Vancouver Island would recommend that:

1. authority for investigating pardon applications be removed from R.C.M.P. and delegated to an authority whose primary role is the rehabilitation of the criminal offender.

2. close study be made of possible negative results of approaching persons in the community unaware of an applicant's past criminality.

3. in the event it can be demonstrated that approaches made to persons listed under Section 11 and 15 of the Application form may prove harmful to the applicant, that appropriate changes be made either to the requirements of these Sections, or to the form of approach to persons listed in these Sections.

Respectfully submitted for your consideration.

Yours sincerely,

The John Howard Society of Vancouver Island
Michael C. Bennett
Executive Director

APPENDIX "B"

The John Howard Society of Quebec, Inc.,
1647 St. Catherine St. West,
Montreal 108, P.Q.

June 3rd, 1971.

Honourable Senators:

Our organization is the oldest prisoner's aid society providing continuous service in Canada. It was founded in 1892. Its objectives are the rehabilitation of adult offenders, both male and female, and penal reform.

Assuming you are referring to criminal records our view based on experience is the following.

There are many obstacles that come between the offender and his rehabilitation. One of the most serious ones is his difficulty in finding acceptance by the community once out of prison or pen.

This alienation leading to recidivism is further intensified by his past criminal record. Even if he approaches the community and begins to benefit from some initial acceptance, his inability to obtain employment due to the

record merely serves to drive the more sensitive ones back into the old familiar haunts and pursuits.

All figures seem to agree that the overwhelming majority of those that will recidivate will be back in prison or pen within six to seven months. Hence, any one who keeps himself crime-free for three or five years is said to have contributed to his own rehabilitation.

Criminal records of permanency are an injustice to the ex-offender when our society hypocritically maintains that the offender "has now paid for his crime and is free". He is not free as the record hangs over his head like the sword of Damocles for the rest of his natural life.

The permanent criminal record also fills the ex-offender with bitterness and hostility towards society, and gives him some justification for once again lashing out at the community by resorting to crime. It also makes it extremely difficult for us to rehabilitate anyone under similar circumstances.

To preserve the system of permanent records is in our estimation archaic, punitive, and unjust.

Most sincerely,

Stephen Cumas
Executive Director

APPENDIX "C"

BRIEF TO THE SENATE COMMITTEE ON THE
CRIMINAL RECORDS ACT

When Bill C-5 was first introduced in 1969, I was puzzled as to whether it was intended to be an act to deal with Criminal Records or if it was an act purporting to extend the Royal Pardon. However, by section 8, it would appear that this act does not concern itself with the Royal Pardons but introduces what may be termed Governor-in-Council Pardons. Why it was thought necessary to introduce this element of a pardon is equally as puzzling to me now as it was in October 1969. It seems to me that combining the matter of granting pardons and custody of records simply creates confusion and does not seem to achieve any desired purpose.

PURPOSE OF ACT

(a) Is it a Records Act?

If the purpose of the Act is to expunge the records of persons who have remained record free for a particular number of years, then there seems no reason why that ought not to be done. All that would be necessary is a simple act setting out substantially what is now in section 6 of the present act, changing the words "in respect of which a pardon has been granted" to "a person who has not had a further conviction for a period of five years or more."

(b) Is it a pardon?

If it is intended to grant pardons to persons who have conducted themselves in a particular way then this ought to be done. It seems to be somewhat of a child's game to say we will grant you a pardon, however, if you don't behave yourself in the future we might revoke it. That type of psychological approach seems to be rather doubtful when dealing with grade one children and seems to have absolutely no merit whatsoever in dealing with adults, particularly with the type of adults that this Act purports to deal with.

If the present Act is to be continued with its two-fold method of granting pardons and controlling records, which I suggest is simply bad law, I would suggest two improving amendments, as follows; (a) repeal section 3 requiring persons to apply for a pardon. If it is genuinely felt that a person who has lived a normal life for a period of five years or otherwise, ought not to be burdened by a lingering criminal record, then that record ought to be expunged without more. It seems to me wrong in principle to be dangling goals in front of people and in effect saying to them, "If you will be good for so long and if you will ask nicely, we will look you over and see what we think of you now." As I indicated earlier this seems to me to be a form of a child's game. Furthermore, the need to make application creates in fact a built in discrimination. If such provision is necessary, then it can be accepted, where it is not necessary, then surely it ought not to be used.

(b) Repeal section 4 and replace it with a section simply requiring that the records of convicted persons

will be examined after a five year period to ascertain whether any further convictions have been recorded.

I do not believe that persons who have been convicted of an offense and who have paid their fine or served their time ought to be treated differently from anyone else in society. I do not see why they should be held to account more so than any other person. It seems to me quite improper that those persons ought to be required to build up a record of goodness. It is totally fallacious thinking that every sinner who is punished will be or should be from then on a saint. There seems to be a fundamental, but false, impression that every convicted criminal having served his punishment must then lead a good life. Surely it is sufficient if such people lead a normal life. Surely all ex-criminals do not have to maintain themselves in a state ready for canonization, yet this seems to be what the majority of unconvicted people think. I maintain that we must deal with ex-criminals with realism rather than with idealism. Surely all that is necessary is that there be an examination of the records.

If, however, it does seem necessary to require persons to make applications and have such applications followed by an investigation, it should surely not be necessary to have the investigation conducted by the top criminal investigation agency in the country. It must be well known the stigma attached to such an investigation. The fact that the investigation may completely exculpate the person investigated may be totally irrelevant for it is the fact of the investigation that causes the damage. If it is necessary to conduct such an investigation it is certainly not necessary that they be conducted by the R.C.M.P.

It may be argued that the R.C.M.P. are, because of their training etc., best able to conduct criminal investigations and to ascertain whether or not a person has been, in the past five years or otherwise, engaged in criminal conduct. That may be true, however, that does not indicate that the R.C.M.P. are the best agency to investigate an applicant for a pardon. In such a case, surely all that is necessary is reasonable assurance that the applicant is leading a normal life and it is surely not necessary to subject the person to an inquisition. Furthermore, at this time in Canada with so much sophisticated criminal investigation to be conducted it seems incredible to me that members of our best police force be diverted to investigating applicants for a pardon. I personally suggest this is quite an improper use of the R.C.M.P. Although I have the highest regard for the R.C.M.P. as a police force, I just do not see such investigations as proper police activity and I am reasonably convinced that such investigations are likely to defeat the very purpose for which they are conducted.

There is one other matter that causes me some concern and that is the effect of a pardon. Section 5(b) provides that the grant of a pardon vacates the conviction in respect of which it is granted, unless the pardon is subsequently revoked. It is unclear to me what is included in the word vacates. The situation I have in mind is where a person receives a pardon and is later concerned to fill out an application for a bond or for admission to a profes-

sional society and one of the questions asked in the application form is, "Have you ever been charged or convicted of a criminal offense?" Does section 5(b) of the Criminal Records Act mean that a convicted person can answer such a question in the negative. I would suggest it does not. A person replying to such a question would still have to answer that they had been convicted although they might add as an explanation that they had been pardoned. Even if such an explanation were offered, it seems to me of little help for the person has already admitted to having a criminal record. What the real effect is of vacating the conviction is difficult to understand. A person who receives a pardon is unlikely to go about the boasting of it and indeed it is necessary if one mentions a pardon to disclose the conviction. It seems to me the very thing the convicted person wants to avoid is disclosure of his conviction.

Even if one were to argue that the term vacates in section 5(b) means that a person would be entitled to say that he has no criminal record is still faced with the possibility of having his pardon subsequently revoked, thereby putting him in a most difficult position.

For many years I have thought and have advocated that certain records ought to be expunged after a particular period of time. In the case of criminal records, it seems to me to be within the legal jurisdiction of the parliament of Canada to expunge criminal records. I am still not convinced that it is beyond the ingenuity of the Canadian parliament to do so effectively. The present Criminal Records Act does not do so.

Daniel M. Hurley, C.D.
B.A., B.C.L., LL.M., Ph. D.

APPENDIX "D"

John Howard Society
of Saskatchewan

June 7, 1971.

Honourable Senators:

May I express first of all our appreciation for your efforts in keeping us informed of the debate proceedings within the Senate on matters relating to a review of the administration of the Criminal Records Act and other matters relating to the correctional system, the ex-offender and the offender in Canada. The John Howard Society of Saskatchewan, since it expresses both a citizen concern and a professional concern in the corrections field, is vitally interested in developments and proceedings of this nature.

Our provincial board will not be meeting again until possibly September or October of this year. My comments on the Criminal Records Act and the administrative procedures, although they might be shared by members of the board of the John Howard Society of Saskatchewan, must remain as simply my comments until such time as the board is in a position to endorse or compile a position statement on the matter.

First of all let me say that I agree with the position on the inappropriateness of the R.C.M.P. conducting an investigation of this nature. I support your position that such an investigation should be carried out by the National Parole Service. The only valid argument that I can see being put forth for the R.C.M.P. conducting the investigation is that the organizations, business firms, or individuals who are to be informed by the ex-offender of the fact that he has received a pardon would be more likely to place trust in the investigative procedures leading up to the pardon if these were conducted by the R.C.M.P.

Although I do not agree with a number of the objections raised in the Senate debates by the Honourable L. P. Beaubien, I do believe that he has hit upon an important factor when he asks the question, regarding the ex-offender's motivation in applying for a pardon, "Why would he appeal then, if he has never had any problems, to have his record obliterated?" I believe that in reviewing the administration of the Criminal Records Act a review of the use to which the pardon will be put by the ex-offender is essential.

From my experience with ex-offenders enquiring regarding the possibility of obtaining a pardon, since the passing of the Criminal Records Act in its present form, I am convinced that the pardon is not meeting the needs or concerns of the ex-offender.

The first concern of a number of the ex-offenders who have made enquiries regarding a pardon is that they be allowed visa privileges to the United States, both visiting and resident. The fact that the pardon is not recognized by United States Immigration authorities, negates its use in this regard. It would seem that there is a growing necessity for interpretation and discussion with U.S.

Immigration officials to allow for the recognition of a pardon toward the easing of immigration regulations in this instance.

Another motivating factor, on the part of the ex-offender seeking a pardon, may be his intent to apply for a bond in connection with his employment. In this regard, I have contacted two of the largest bonding organizations in the province of Saskatchewan and they inform me that such a pardon would definitely have weight in their consideration of a bonding application. It is interesting to note however that both of these major insurance companies in Saskatchewan indicate that they have not been provided with material from the federal government relating to the changes in the Criminal Records Act and the resulting provisions for a pardon. They expressed an interest in obtaining material relating to the provision for a pardon and also relating to the investigative procedures employed in the screening of applicants. I feel it is a rather serious oversight that such material has not been provided to them as a matter of course.

As a matter of interest, both of the insurance companies which I contacted indicated that they would not weight the pardon differently depending upon whether or not it represented the investigative efforts of the R.C.M.P. or the investigative efforts of the National Parole Service. Their concern would be with the investigative procedure itself.

Another use that the ex-offender may be intending for the pardon is in relation to his application for credit. Again, I have contacted two of the largest credit bureaus in the city of Regina. I have been informed by the credit bureaus, that they have received no information on the Criminal Records Act or the procedure for granting pardon. They have informed me as well that information relating to a pardon having been granted to an ex-offender would definitely have a positive effect upon his credit rating.

I recognize that the problem is much greater than that of communication and, in effect, involves jurisdiction. It is a matter of concern however that, although the records of the R.C.M.P. and the Penitentiary and all records on a federal level are "locked up" upon the granting of a pardon, records kept by credit bureaus, insurance companies, provincial police, municipal police, etc., are in no way affected. These records are more likely to have an immediate effect upon the ex-offender's operation within the community.

Again, as a matter of interest, the credit bureaus which I contacted indicated that they would be willing to destroy all records relating to criminal offences upon receipt of confirmation that a pardon had been granted. One credit bureau informed me that, as a matter of course, any offence committed more than seven years prior to the enquiry regarding the individual's credit rating is not included in their credit report.

I have appreciated this opportunity of expressing my concerns on the administration of the Criminal Records Act. As you can see from the above comments, I feel that

the present provisions of the Criminal Records Act as well as the administration of this Act restricts the effect of a pardon to the point that it becomes of very little significance to the ex-offender. I hope that your sub-committee enquiry will lead to measures being taken which

will increase the scope and effectiveness of the present provisions and administration of the Act.

Yours sincerely,
S. Hunter, M.S.W.,
Executive Director.

APPENDIX "E"

[Translation]

Service de Réadaptation Sociale Inc.
50 St. John Street,
Room 156,
Quebec 4, P.Q.
Telephone: 529-9441

Honourable Senators:

We, the Social Rehabilitation Service, are pleased to reply to the invitation of May 13 from the Honourable Senator Earl A. Hastings and to forward these comments to the subcommittee of the Senate Committee on Judicial and Constitutional Affairs set up to investigate the Law on police conviction records.

We have enclosed some information circulars as well as a report on the objective of our society.

On examining these documents, you will discover that the Social Rehabilitation Service is an interdisciplinary centre for services to adult delinquents of both sexes, to their family and to the community to which they belong. Our society caters to the immediate area of Quebec.

You will find in the report the required information on our goals, our duties, our services, our staff, our methods of working and our clients.

Yours sincerely,

Service de Réadaptation Sociale Inc.
Jean-Luc Côté, t.s.p.,
Chief-Director.

Comments of an "ad-hoc" committee of staff of the Social Rehabilitation Service to the sub-committee of the Senate Committee on Judicial and Constitutional Affairs concerning the investigation into the Law on police conviction records, and in particular, on the operations and the application of paragraph 2 of article 4.

I—The "ad-hoc" Committee of the staff of the Social Rehabilitation Service that investigated this question, wishes to express its support for the Honourable Senator Earl Hastings who did well to point out the implications of placing the R.C.M.P. in charge of the inquest in cases of requests for pardon. The examples cited by the Honourable Senator show clearly that such a position is inadequate and not in keeping with the spirit of the new law.

We have the impression that the National Commission of Paroles, in delegating to the R.C.M.P. its authority to carry out this inquest, is not in tune with the new law and that it has simply retained the procedure followed previously for obtaining a pardon. In so doing, it has undermined the new spirit that Parliament intended and wished to uphold in adopting this law.

II—In regards to the inquest to be carried out, our committee is of the opinion that the same procedure as in investigating parole requests ought to be followed in requests for pardon. Thus, the responsibility for the inquest would rest with the officer of the National Commission of Paroles, who could if the need arises consult with the various agencies to complete this inquest. The R.C.M.P. and the other police forces if need be could be called to check if the petitioner has committed other offences since those for which he is requesting pardon. Other community societies, such as the Social Rehabilitation Service, could supply social background in the case of petitioners known to them.

Moreover, before the National Commission of Paroles makes its recommendation to the Minister, the petitioner should have the chance to appear before a regional commission of the kind which has sessions in institutions of detention when parole requests are investigated. This regional commission could consist of two (2) commissioners of parole qualified to make a decision on the spot as to the recommendation to be made to the Minister. These commissioners could be assisted by a parole officer who made the investigation and a representative of the consulted community society, if necessary.

To uphold the spirit of the law, it is only right to add that the inquest ought to be held and the decision made within a reasonable time limit.

III—Regarding the community inquest in cases of parole, we believe that it ought in no way rest with the police. If the National Commission of Paroles claims that its officers are overloaded, it should perhaps make more use of the charitable societies as was advocated by the Commission Ouimet. We find that the National Commission of Paroles tends today rather to exclude these charitable societies from the services which they have been providing for a long time and which they still provide.

As another way of relieving the parole officers who are said to be overloaded, we agree with the suggestion to use trained citizens as assistants by giving them a role as observer. Moreover, we have advocated the use of citizens in our report on the objective of the Social Rehabilitation Service (cf. pages 55 and 56) and we are presently negotiating to obtain the funds to train citizens and to help them the better to play this role.

IV—Concerning the intervention of the Honourable Senator Beaubien, we respect his opinion on the question and we can only express our dismay before the fact that in the twentieth century, such antiquated views and ideas can still be defended.

An "ad-hoc" committee of the staff of the Social Rehabilitation Service.

By Jean-Luc Côté, t.s.p.,
Chief Director
The 4th June, 1971

APPENDIX "F"

The Elizabeth Fry Society
 Toronto Branch
 215 Wellesley Street E., Toronto 282
 Telephone: 924-3708
 June 10, 1971

To: The Sub-Committee Examining the Criminal Records Act

From: The Elizabeth Fry Society, Toronto Branch

It has been evident to us that the gaining of a pardon is of very great importance to those who receive it. We are pleased to be able to bring to your attention some of our concerns in relation to it. We note that your particular area of interest has to do with the inquiry which takes place so our comments will be related to that part of the law.

Sec. 4, Sub-Section 2—The Board shall cause proper enquiries to be made in order to ascertain the behaviour of the applicant. There would seem to be two aspects of any such enquiry: 1) the possibility of further criminal involvement and 2) the question of the person's behaviour. The information is readily available as to whether or not a person has been found guilty of further indictable offences and the probabilities are that the local police can provide information as to whether or not there has been a finding of guilt for any summary conviction offence.

Great care needs to be taken in considering charges which have been laid where the person is found "not guilty". In some places, because of a previous record, a person is charged with an offence without any adequate basis of fact. In other cases, the finding of "not guilty" is based on a technicality but there is every indication that the person is still involved in criminal activities. If such charges are brought to the attention of the Board, there should also be an objective appraisal of the reasons for acquittal.

The question of good behaviour is much more difficult to assess. The first point needing clarification has to do with the meaning of "good behaviour". One tends to interpret such a phrase by one's own standards, which may be very different from the standards of the group to which the applicant belongs.

Should the standard of behaviour on which one is being judged have any direct relationship to the situation under which the previous crime was committed, and if so, is this the only area of behaviour which should be assessed?

These questions and other related ones would indicate that any such enquiry should be carried out by a person who has training and ability to look at the person's behaviour in relation to these matters.

On the form, the applicant is asked to give names of references and to indicate whether or not the person

knows of the applicant's criminal record. If the person knows of the record, there is little difficulty in discussing the applicant's present situation with the referee. If, however, the person does not know of the record, it is important that the information is not conveyed to him by word or manner of the interviewer.

For these reasons it would seem to us to be important that the carrying out of this part of the enquiry should be handled by the staff of the Parole Board or a community person selected by the Regional Director of the Parole Board. In larger centres this might be a staff member of an after-care agency. In a smaller centre, it might be a social worker, minister or some other appropriate professional person.

Sec. 4, Sub-section 2 (b)

We would like to raise the question of the time limit being 5 years for all indictable offences. For instance, it seems inappropriate that a person whose only conviction is for a very minor petty theft should have to wait 5 years before being considered for a pardon. At the other extreme, we regret that no provision is made for the granting of a pardon to the person who gets a life sentence.

These are the points which I will look forward to discussing with the committee on Tuesday. Other points which are of concern to me, and which I would be prepared to discuss with you, if you consider them within your terms of reference and have time to discuss them, are:

1. The need to let people know how to obtain an application for pardon
2. The significance of the term "vacate the conviction".
3. If a person wishes to appeal to the Board, is she given adequate information regarding the basis of refusal?
4. The implications of a pardon being revoked.

Phyllis G. Haslam
 Executive Director

THE ELIZABETH FRY SOCIETY
 Toronto Branch
 215 Wellesley Street E., Toronto 282
 Telephone: 924-3708

June 10, 1971

The Elizabeth Fry Society, Toronto Branch, is a voluntary agency which was incorporated in 1952. It is managed by a Board of 18 members, elected by the membership of the Society. It has three main aims:

- (1) To help girls and women (16 years of age and over) who have come into conflict with the law, to gain a new sense of their own worth and dignity and to help them to become happily established in the community.

(2) To carry out a program of education for our own membership and the community in general regarding basic information about girls and women who come into conflict with the law especially in relation to causes of crime, need for strengthening preventive services, present services for the woman offender and changes which should be encouraged, need for changes in legislation, etc.

(3) To carry out a program of social action which includes bringing to the attention of respective governments the need for changes in service and/or legislation, the preparation and presentation of briefs etc. and, where necessary, carrying out a program of

public information regarding serious needs for change.

The program of the agency falls into three main categories:

(1) A counselling service for those who have come into conflict with the law.

(2) A residence which accommodates fourteen.

(3) An active volunteer program which carries out activities in areas such as a) court volunteers, b) assisting with temporary absence programs, c) public relations, public action and education programs and d) assisting in the office and residence, etc.

APPENDIX "G"

Submission to the Subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs Inquiring into the Administration of the Criminal Records Act by St. Leonard's Society of Canada.

Honourable Senators:

The St. Leonard's Society of Canada was established in January 1967, under a federal charter to assist in the organization of community residential centres for parolees, released prisoners, probationers and offenders, including the selecting and training of a qualified staff for St. Leonard's Houses as they are established in major cities throughout the country.

This organization represents Canadian society as completely as possible, particularly the religious, social, business and labour elements from the various regions across Canada, in addition to the representative Houses affiliated with the national society.

The objectives of the St. Leonard's Society of Canada are:

1. The establishment and development of community residential centres.
2. The study of penal and correctional legislation and to play an active role in reforms aimed at the advancement of corrections in Canada.
3. To act as general liaison between the St. Leonard's Society of Canada and government authorities.
4. To establish minimum standards for Member Houses.
5. To do fund raising on a national basis including possible financing of individual houses through government grants.
6. To build essential research into the whole programme.

There are now thirteen communities that are associated with the St. Leonard's Society of Canada and seven of these are in operation. It is expected the balance will be operating in the near future. Several other communities are in some initial stage of organization at the present time.

HOUSES IN OPERATION:

St. Leonard's House, London
 St. Leonard's House, Windsor
 The Inn of Windsor
 La Maison Painchaud, Quebec
 The Fraternity, Sudbury
 St. Leonard's, Vancouver
 St. Leonard's House, Toronto

HOUSES IN PLANNING STAGE:

New Beginnings, Windsor
 St. Leonard's, Bramalea
 St. Leonard's, Brantford
 St. Leonard's, Halifax-Dartmouth
 Dysmas House, Kingston
 St. Leonard's, Waterloo County

The St. Leonard's Society of Canada feels very strongly that the Criminal Records Act is an excellent statute and will do much to assist those people who have served their sentences imposed by the Courts and have been released from prison, rehabilitated themselves in the community, and are now leading useful lives as citizens of Canada.

We are very concerned, however, with the one section of the Act which allows members of the Royal Canadian Mounted Police to investigate the lives and records of those who have served their sentences, sometimes as much as twenty to thirty years previous.

We feel very strongly that if any investigation is needed that this particular function should be taken over by members of the National Parole Service who are trained and experienced in dealing with people who have served their time and have been rehabilitated in the community.

It would seem to us that people who have spent five years in the free community without any additional trouble with the law or further convictions are certainly entitled to a clearance of their record and to be included as useful and productive citizens of Canada.

We hope this one particular aspect in the administration of the Act will be changed in order that more people who have demonstrated their ability to exist as productive citizens will be allowed this privilege.

All of which is very respectfully submitted.

St. Leonard's Society of Canada
 (Rev.) T. N. Tibby, Executive Director

ADDENDUM
"A"

THE "HALFWAY HOUSE" MOVEMENT

The "Halfway House" Movement is a long-established tradition in Europe. It is a modern and practical approach to the age-old problem of assisting men and women discharged from prison to rehabilitate themselves in society and to avoid the temptations which might lead them back to crime and prison.

Many people return to crime and prison because when they leave prison, they cannot return to a normal, or satisfactory, home life; because they find it extremely difficult, and often impossible, to find suitable employment; and because they lack personal counselling services.

A "Halfway House" is a residence, as home like as possible, within a metropolitan area, where persons recently released from prison can live inconspicuously for a few weeks or months, sharing with others the task of re-shaping their lives, seeking employment, receiving counsel and encouragement. It is an extension of the services offered by the John Howard Society, and does not in any way conflict with, or duplicate these services.

THE MOVEMENT IN NORTH AMERICA

The first modern "Halfway House" in North America was established in 1954 in the city of Chicago by the Rev.

James G. Jones, Jr., an Episcopal priest who was then Chaplain of the Cook County Jail in Chicago. Other small undertakings in the "Halfway House" movement had taken place as early as the 1850's but they were small and insignificant and it was not until St. Leonard's House in Chicago was established by Fr. Jones that the modern "Halfway House" Movement was born in this part of the world.

In 1959, "Dismas House" was established in St. Louis, Missouri, under the direction of the Rev. Charles Dismas Clark, S.J., a Jesuit Priest who provided a temporary home for 60 men at a time. The famous movie, "The Hoodlum Priest", was made on the work of Fr. Clark and depicts his humanitarian effort extremely well. Many new "Halfway Houses" have been established recently in the United States of America. There are several hundred operating in major American cities at the present time.

A START IN CANADA

The first "Halfway House" in Canada dealing with released prisoners from both penitentiary and reformatory was "St. Leonard's House", established in Windsor, Ontario, receiving its first guest on May 8, 1962. Both Fathers Jones and Clark attended the official opening in January, 1963, at Cleary Auditorium, Windsor, Ontario.

From May 8, 1962, to December 31, 1969, six hundred and sixtyone men had passed through St. Leonard's House in Windsor, Ontario. In addition to this residence facility, in the year of 1968 alone, four hundred and sixty-six out-clients were served by St. Leonard's House in the areas of employment, counselling and other services which is a greatly expanded service for people not residents of the House and including ex-guests as well as men serving time in penal institutions.

Incorporated under a Provincial Charter in December, 1961, St. Leonard's is located in two houses in the 400-block of Victoria Avenue, Windsor. The corporation is conducted by inter-denominational boards of men and women from all walks of life.

Although the project was initiated by an Anglican priest, the Rev. T. N. Libby, B.A., M.S.W., L.Th., it has been supported by the Roman Catholic Bishop of London, the Jewish Community of Windsor, and most major religious denominations not only on the local but also on the national level.

St. Leonard's House is staffed by its executive director, Louis A. Drouillard, an assistant, several house managers working on split shifts in order to staff the House 24 hours a day 7 days a week, a secretarial and office staff dealing with the large volume of correspondence with men in prison and their families as well as parole boards and other concerned people in the community, a cook and a cleaner, students from the School of Social Work and seminarians during the summer months.

ST. LEONARD'S SOCIETY OF CANADA

The St. Leonard's Society of Canada was established in January, 1967, under a federal charter to assist in the organization of community residential centres for parolees, released prisoners, probationers and offenders,

including the selecting and training of a qualified staff for St. Leonard's Houses as they are established in major cities throughout the country.

This organization represents Canadian society as completely as possible, particularly the religious, social, business and labour elements from the various regions across Canada, in addition to the representative Houses affiliated with the national society.

The objectives of the St. Leonard's Society of Canada are:

1. The establishment and development of community residential centres.
2. The study of penal and correctional legislation and to play an active role in reforms aimed at the advancement of corrections in Canada.
3. To act as general liaison between the St. Leonard's Society of Canada and government authorities.
4. To establish minimum standards for Member Houses.
5. To do fund raising on a national basis including possible financing of individual Houses through government grants.
6. To build essential research into the whole programme.

The head offices of the St. Leonard's Society of Canada are located in Suite 204, 327 Ouellette Avenue, Windsor 14, Ontario. Further information on this national programme can be obtained by writing to the Executive Director, the Rev. T. N. Libby, at the above address. There are now fifteen communities that are associated with the St. Leonard's Society of Canada and seven of these are in operation. It is expected the balance will be operating either this year or in 1971. Several other communities are in some initial stage of organization at the present time.

HOUSES IN OPERATION:

St. Leonard's House London
St. Leonard's House Windsor
The Inn of Windsor
La Maison Painchaud, Quebec
The Fraternity, Sudbury
St. Leonard's Vancouver
St. Leonard's House Toronto

HOUSES IN PLANNING STAGE:

St. Leonard's Bramalea
St. Leonard's Brantford
St. Leonard's Halifax-Dartmouth
Dysmas House Kingston
Moncton
Waterloo County
Montreal

OPERATING METHODS:

People are received at St. Leonard's Houses on the completion of their sentence or on parole granted by the National Parole Board or a Provincial Parole Board. A new programme through the Canadian Penitentiary Service where people come to us early on release through a pre-release programme was instituted in 1967. They

remain for periods ranging from six weeks to three months, averaging approximately two months each.

Persons who are without homes and jobs after their release from prison and are returning to a particular area, are given preference. But exceptions are made when facilities are available and it is indicated a person could benefit from a stay in one of our Houses.

Applications are received from inmates in penal institutions prior to their release from prison. They are

reviewed by an Admission Committee composed of people in the area familiar with after-care of ex-prisoners and others interested in the project. Detailed social histories are received from respective probation departments, institutions, families and friends. Notifications of all applications, and of our committee's decisions, are sent to the National Parole Board or the Provincial Parole Board. This information may influence the Parole Board's decision.

APPENDIX "H"

Submission to the Subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs by John Howard Society of Ontario.

Honourable Senators:

Our Society is involved in after-care work with ex-inmates of penal institutions, both penitentiaries and reformatories. That this is an extensive operation is indicated in that we have fifteen branches in Ontario and that last year we served some 5,000 men in the community and a great many more in the institutions prior to release. Every Province in Canada has a Society doing similar types of work.

In addition we have an extensive role in public education and penal reform in which connection we have many submissions to various public bodies and government departments.

Arising from these activities we have had quite a few enquiries regarding pardon and have worked with some men in their efforts to obtain a pardon.

It has been our general experience that there is a reluctance on the part of enquirers to make application when they see on the application form that five references must be provided and that an enquiry will be made in person to the references.

This is not such a problem to men who have revealed to friends or employers that they have a criminal record or if they feel close enough to tell their story to friends and ask them to stand as references. In such cases direct enquiry does not create a problem provided it is discreetly done by non-uniformed police. In our experience this has been the case, and we have had no adverse comments as to the procedure followed by the police.

However, when a man has completely changed his life style and successfully hidden a past criminal record even from his family, this does present a problem as he is most reluctant to reveal his part to friends or business associates as references.

In such a situation it would make little difference if it were police, parole officer or John Howard Society representative who made the enquiry of the reference since the purpose would automatically stand revealed.

It is our understanding that the Pardon Section of the Parole Service will, in exceptional cases, accept open

testimonials or general references and forego the direct equity of references. This practice is to be commended and should be extended.

It is our view that the man should continue to make application on an individual basis as this has meaning to him in this reinstatement in society. It would be numerically impracticable to make an automatic review of all ex-offenders at the end of five years and it would also, we believe, detract from the sense of achievement and regained worthy citizenship on the part of the applicant.

However, we suggest that the application form be changed by removing the initial request for references and that the applicant be requested to appear in person at the nearest District Office of the Parole Service. This would clarify the actual value of the pardon and through the personal interview much of the necessary information as to the applicant's community status would be obtained as well as providing opportunity for a personal evaluation by the Parole Service representative.

We see no reason, however, why applications, when received by the Parole Service, should not be referred to the R.C.M.P. who, in consultation with the local police, could determine the status of the applicant in regard to criminal activity. The local police have developed intelligence squads and are usually in a position to make such an assessment. If there is no question in their mind, then surely the pardon should be granted without any further investigation. If they have proof of criminal activity or reservations as to good citizenship, the applicant should be faced with this information and given an opportunity to discuss the matter with the police and the Parole Service when, if he satisfies them, the pardon should be granted.

In doing this he should be allowed to give references if he wishes or to supply open testimonial and proof of employment and acceptable citizenship activities.

Such a procedure would almost entirely obviate the need of personal interviewing of references, except with the applicant's knowledge and consent and only as a last resort. It would obviously relieve the fears of many would-be applicants and encourage them to make use of this symbolic reinstatement in society.

Trusting that these suggestions may prove of interest and be of assistance to your Committee.

John Howard Society of Ontario.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. ROEBUCK, Chairman

The Honourable A. HARPER PROWSE, Acting Chairman

No. 10

THURSDAY, SEPTEMBER 30, 1971

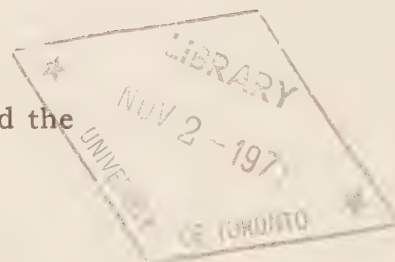
Complete Proceedings on Bill C-243,

intituled

“An Act to amend the Judges Act and the
Financial Administration Act”.

REPORTS OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)



THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable A. W. Roebuck, *Chairman*,

The Honourable E. W. Urquhart, *Deputy Chairman*.

The Honourable Senators:

Argue	Hayden
Belisle	Laird
Burchill	Lang
Choquette	Langlois
Connolly (<i>Ottawa West</i>)	Macdonald (<i>Cape Breton</i>)
Cook	*Martin
Croll	McGrand
Eudes	Méthot
Everett	Petten
Fergusson	Prowse
*Flynn	Roebuck
Gouin	Walker
Grosart	White
Haig	Willis
Hastings	

(Quorum 7)

**Ex officio member*

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, September 29, 1971:

“With leave of the Senate,

The Honourable Senator Cook moved, seconded by the Honourable Senator Lang, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—

Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, September 30, 1971.

(12)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Choquette, Cook, Eudes, Gouin, Laird, Langlois, Prowse and White—(8).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Laird, the Honourable Senator Prowse was elected Acting Chairman.

The Committee proceeded to the consideration of Bill C-243, "An Act to amend the Judges Act and the Financial Administration Act".

The following witnesses were heard in explanation of the Bill:

Mr. D. S. Maxwell, Deputy Minister of Justice and Deputy Attorney General of Canada;

Mr. H. A. McIntosh, Director,
Privy Council Office, Department of Justice.

On Motion of the Honourable Senator Cook, it was Resolved to report the said Bill without amendment.

At 10:50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, September 30th, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-243, intituled: "An Act to amend the Judges Act and the Financial Administration Act", has in obedience to the order of reference of September 29th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Harper Prowse,
Acting Chairman.

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, September 30, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-243, to amend the Judges Act and the Financial Administration Act, met this day at 10 a.m., to give consideration to the Bill.

The Clerk of the Committee: Honourable senators, in the absence of the Chairman of the committee is it your pleasure to appoint an Acting Chairman?

Senator Keith Laird: Honourable senators, I move that Senator Prowse be appointed Acting Chairman of this committee.

Senator Langlois: I second the motion.

Motion agreed to and Senator J. Harper Prowse appointed Acting Chairman.

Senator J. Harper Prowse (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have Mr. Maxwell as our witness this morning. Would it be your wish that he give a brief explanation or, following the explanation we had last night, would you prefer to ask questions on particular matters you have in mind?

Senator Choquette: I think that we received a fairly full explanation yesterday in the Senate from Senator Cook, and that we should limit ourselves to questions that were perhaps not asked of Senator Cook or that were asked but to which we did not receive answers.

Senator Cook: That is a fair comment!

The Acting Chairman: Is it agreed that we adopt that procedure?

Hon. Senators: Agreed.

Senator White: I would like to ask Mr. Maxwell a question regarding section 20A, which deals with supernumerary judges. When it speaks of "or courts of the province" does that mean the county court? This is page 8, section 20A(1)(a).

Mr. D. S. Maxwell, Deputy Minister of Justice and Deputy Attorney General of Canada: In some provinces you have one superior court and in others you have two. For example, in British Columbia you have two separate courts: a court of appeal and a trial court. In Ontario you have one court that has two branches. So, in order to make sure you cover the situation, you have to use both the singular and the plural. That is why it is written like that, but it does not include the county courts.

Senator White: So there will be no supernumerary county court judges?

Mr. Maxwell: Not under this bill, sir.

Senator Cook: I have been asked by several honourable senators about the removal of judges. This act does not interfere with section 91(1) of the British North America Act, does it, if the Canadian Judicial Council does recommend a removal, which then goes to the Governor in Council? I am referring to section 33(3), which reads:

A judge who is found by the Governor in Council, upon report made to the Minister of Justice of Canada by the Council to have become incapacitated or disabled from the due execution of his office shall, notwithstanding anything in this Act, cease to be paid or to receive or to be entitled to receive any further salary if the Council so recommends.

In that case the salary would cease, and what would happen to the appointment of the judge?

Mr. Maxwell: First of all, the Act cannot interfere with any provision of the Constitution, and it is not designed to do that. What it does do is permit this body to make recommendations to the minister. Then, of course, if the Government sees fit to accept the recommendations of this body—and it is open to the Government to reject them, if it thinks it should, but I do not imagine that would happen very often—and assuming the recommendations for removal are made and accepted by the Government, it would have to proceed before the two Houses.

Senator Cook: To remove?

Mr. Maxwell: Yes.

Senator Cook: But not to cease.

The Acting Chairman: There is subsection 7.

Mr. Maxwell: Subsection 7 reads:

Any order of the Governor in Council made pursuant to subsection (5) and all reports and evidence relating thereto shall be laid before Parliament within fifteen days after that order is made, or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

The Acting Chairman: Subsection 5 refers to subsection 1, which would cover the situation, so that any action taken by the Governor in Council to cut a judge's pay would have to be laid before Parliament under subsection 7.

Mr. Maxwell: I would point out that subsection 5 deals only with the removal of county court judges; they are not protected as to tenure in the same way that superior court judges are at present. As a matter of fact, subsection 5 merely carries forward the provisions of the present statute.

Senator Cook: That is county court judges.

Mr. Maxwell: That is county court judges only. When dealing with superior court judges, they would have to move before the two Houses.

Senator Laird: There is nothing to stop a resignation, of course.

Mr. Maxwell: Oh, no.

The Acting Chairman: But the Governor in Council can stop the pay of a judge.

Mr. Maxwell: As the bill reads, the pay of a judge can be stopped if the Judicial Council so recommends.

The Acting Chairman: That is what I mean.

Mr. Maxwell: Yes, but only then, which of course affords a good deal of protection to judges, I would think.

Senator Choquette: I have several questions here that were left with me by Senator Flynn, who thought he could be here but is not. While we are dealing with that point, I notice there is one question on it. He asks: What if the Governor in Council reduces the salary of a given judge to \$1 per annum and that particular judge refuses to resign, will that judge be prevented from occupying his office, and will the fact that he refuses to resign prevent the Minister of Justice appointing a judge to replace him?

Mr. Maxwell: In answering that question it has to be borne in mind that there are two separate matters here: one is salary; the other is tenure. The reduction of salary does not result in depriving the man of his office. The only way he can be deprived of his office is pursuant to the provisions of the British North America Act, which involves an address of the two Houses. One may ask what good an office is if there is no salary, and that is a good point. The fact is that technically he remains in office until removed if he does not resign, so that reduction of salary does not affect his tenure as such.

Senator Langlois: And he cannot be replaced.

Mr. Maxwell: He cannot be replaced because there is no vacancy until his tenure is ended.

The Acting Chairman: Presumably this brings it to everybody's attention.

Mr. Maxwell: Yes.

Senator Cook: While we are on this section, Mr. Maxwell, in case you do not get an opportunity to read the remarks I made last night, I should like to bring this passage to your attention. The bill says that the Canadian Judicial Council can act of its own volition, or must act at the request of the Minister of Justice of Canada or an attorney general. I said in my remarks:

A difficult point which may well arise is how the Minister of Justice of Canada or attorney general of a province will know that undue delay is taking place until the matter has become more or less of general complaint, and in the nature of a public scandal. It seems to me that one way to safeguard against this situation is for our courts to file something in the

nature of an annual report. Every type of operation, from the biggest down to the smallest bulls-eye shop, has to file reports and facts and figures with government departments. I see no good reason against requiring our courts to do the same. I therefore suggest to the Minister of Justice that during the next session of Parliament the act be further amended to provide that the registrar of every court be required to file each year with the Department of Justice of Canada and the Department of Justice of its own province information giving the number of cases tried, when heard and when judgment was given. It would then be easy to spot any undue delay and the judge or judges causing it. Such other important information showing how many days the court sat and so on could also be included.

I am not asking you for any comment on that. I am sure it is a matter of policy, but I would like that to be made part of the record and drawn to the attention of the minister.

Mr. Maxwell: That is a very interesting suggestion.

Senator Langlois: There is no provision in this bill dealing with compulsory tabling in the house of any report from the council—am I right in that?

Mr. Maxwell: That is true, with one exception. We visualize, of course, that the ordinary meetings and deliberations of the council will be confidential.

Senator Langlois: So the Minister of Justice could forget about any report and the public would never know that such a report had been made, and the bad judge would remain functioning.

Mr. Maxwell: I would not think so.

Senator Langlois: But it is a possibility.

Mr. Maxwell: It is a possibility, I suppose, but I would think that if a minister became seized of a report that obviously indicated that action should be taken, he would be in very serious difficulty if he did not do something about it.

Senator Cook: He may be anticipating a change of government.

Mr. Maxwell: In practical terms, I do not think that would ever happen. I do not think a minister of justice could very well ignore a report given to him by the council.

Senator Langlois: What was the reason behind not having such a provision in the act, for compulsory tabling of the report?

Mr. Maxwell: You mean automatically?

Senator Langlois: Yes.

Mr. Maxwell: I think the feeling is that generally speaking we do not want the deliberations of this council to be made public. We think it should ordinarily hold *in camera* sessions. One of the problems with the judiciary is that a public inquiry can destroy a reputation even though there is basically no ground for taking any action. We are trying to protect the judiciary in this regard.

Senator Langlois: I understand that, but once an investigation has been carried out and the report made to the minister, why is not this report tabled in the house? If the report is against the judge, then he is a bad judge anyway, so what are we losing by making it public?

The Acting Chairman: Suppose he is a good judge and the accusation is a nasty one?

Mr. Maxwell: I would think that until the government decided it had something before it requiring action it would be very unwise to make anything public, generally speaking.

Senator Langlois: I remember one case in which a judge was removed on a joint address, but the whole thing was made public in the press even before a report was made.

Mr. Maxwell: I know, that is one of the problems.

Senator Cook: In that case the man was destroyed as a judge as soon as the case opened; his usefulness as a judge was destroyed in the public mind. I must say I entirely agree that it should be confidential.

Mr. Maxwell: We think that it is the better policy.

The Acting Chairman: Clause 32 subclauses 4, 5 and 6 seem to provide that the minister may require that it be held in public.

MboMr. Maxwell: Yes, that is a power the bill reserves to him. I would doubt very much that would ever be exercised, unless there was a most remarkable set of circumstances surrounding the matter.

Senator Cook: Which provision is that?

The Acting Chairman: Subsection 5 provides for confidentiality, and subsection 6 provides that the investigation may be held in public or private. The council can decide to have it in public if they want; and, in any event, at the demand of the minister it has to be public.

Senator Cook: I think this is a very worth while reform, but, like all other reforms in new legislation, it may require amendment from time to time. In my view it is a great step forward, although it may need to be amended from time to time as circumstances dictate, when we see how the council works. I certainly think as a first effort it is very commendable, as I have already said. The minister should be commended.

Senator Choquette: Senator Benidickson left a moment ago and asked me to pose this question to the witness: Why are county court judges treated any differently from supreme court judges? There is one respect in which they are treated differently, the question of retiring at age 70.

Senator Cook: They can also be removed.

Senator Choquette: Yes, they can be removed.

Mr. Maxwell: Their tenure is not the same. They are not protected in the same way under the British North America Act and, of course, they are not paid the same amount of money. I suppose the only answer I can give is that they are different. Their function is somewhat different.

The Acting Chairman: They are entirely the creatures of the provincial legislation.

Mr. Maxwell: The county courts are.

Senator Choquette: They are federally appointed.

Mr. Maxwell: Yes. They are appointed under section 96 of the British North America Act. They are different; their functions are different. They are not superior court judges.

Senator Choquette: I do not know if we can establish that difference, because I am aware that the county court judges, on consent of both counsel, can hear supreme court cases.

Mr. Maxwell: Yes.

Senator Choquette: Every now and then we give them new functions, by legislation, like the right to hear divorce cases. I do not see much difference in their functions. They hear criminal cases with a jury. One exception is that the amounts involved in the suits differ. There is a limitation. If you go before a county court judge with a claim of \$5,000, that might be the limit. Over and above that you might have to go to a supreme court judge. But if both counsel agree, they can hear any case, even if it is \$100,000. So I do not see that they are different in the sense in which you put it.

Mr. Maxwell: Senator Choquette, I can say this to you, that over the years more and more jurisdiction has been given to the county court judges in one way or another. It is quite true that in some provinces—not in all, but in some provinces—there is this consent jurisdiction that relates to monetary amounts. On the other hand, I think there are certain kinds of subject matter that county court judges really do not hear. For example, I do not think they have the power to grant injunctions, except in a very temporary sort of way nor do they grant prerogative relief. There are some limitations on their jurisdiction that do not apply to superior courts. I agree with you, that they are less different now than they once

Senator Choquette: Yes.

Senator Laird: Also, is it not a fact that they cannot appoint a county court judge unless the province indicates that one is required? Let us say there are two in an area of a county and they want three. The third one cannot be appointed unless the province requests it.

Mr. Maxwell: That is true. The province has to establish the office.

Senator Langlois: That applies to superior court judges as well.

Mr. Maxwell: Yes, that also applies to superior court judges. In short, the province establishes its requirements for superior court judges and for county court judges for its courts, and then these appointments are made by the federal authority.

The Acting Chairman: Was there an age 75 provision for retirement, or any provision for retirement, in the B.N.A. Act? I guess there was none. Were they appointed for life?

Mr. Maxwell: At one time the superior court judges were appointed for life; but some years ago the B.N.A. Act was amended to provide for their tenure to cease at 75 years of age. That is still so, and a superior court judge holds office until he is 75.

The Acting Chairman: My recollection is that in Alberta—and I would presume in other jurisdictions as well—the age 75 point of retirement went through for district court judges a very long time before it did for the senior court judges. This was a matter of some concern, for example, until they got the B.N.A. Act amended. I assume that the period of tenure for county court judges was not protected by the provisions of the B.N.A. Act amended. I assume that the period of tenure for county court judges was not protected by the provisions of the B.N.A. Act.

Mr. Maxwell: That is right. That is why we are dealing with it. The tenure of the county court judge was established in the Judges Act, not in the Constitution. What we are doing here is re-establishing that tenure to end at age 70 rather than 75, whereas the superior court judge's tenure is established by the Constitution.

Senator Choquette: Why do we not follow the Constitution? Why do we make the change? Why do we make a difference in the retiring age? That is beyond me.

Mr. Maxwell: You mean, between county court judges and others?

Senator Choquette: Between county court judges having to retire at age 70, instead of age 75, when they had to retire at 75 so long ago, as our chairman has just told us. I remember Judge Proulx in Sudbury. He resigned when he reached 75, about 20 years ago. That was a known fact, that they had to retire at 75.

Mr. Maxwell: Yes.

Senator Choquette: I am asking why there is that change now in this act, making the retirement age of county court judges 70 instead of 75. Is there any reason?

Mr. Maxwell: The reason, sir, is that I suppose it is felt that the judiciary should retire at an age somewhat younger than 75.

Senator Cook: On that point, how does the Federal Court Act read—that they retire at 70?

Mr. Maxwell: Yes.

Senator Cook: Is that not under the Constitution?

Mr. Maxwell: No. The tenure for the federal judges—and what I mean by "federal judges" here is judges of the federal courts, including the Supreme Court of Canada, I may say—is prescribed by acts of Parliament and can be changed by Parliament. When the new Federal Court came into existence, we changed their retiring age to 70. No attempt has yet been made to do that in the case of the Supreme Court of Canada. I could not say whether such an attempt will be made. Of course, we cannot deal with the provincial superior court judges, because their tenure is constitutionally controlled; but we can deal with county court judges.

Senator Cook: They are the ones that you control, inasmuch as Parliament decided that the Federal Court retiring age should be 70. I suppose Parliament has now decided that there is no difference between the Federal Court and other courts in that respect. I suppose the point is that they should be equated, that they also should retire at 70.

Mr. Maxwell: Yes.

Senator Langlois: Could you tell us why this decision on the tenure of office for judges was made? Was it made after having received representations to that effect from the chief justices across Canada?

Mr. Maxwell: I cannot honestly say that that was the situation. There are many who feel that the age of retirement should be reduced. I think many people feel that perhaps the superior court age should be changed from 75 to 70. It is not easy to do that when the retirement age is embodied in the Constitution. It is not so easy to amend the Constitution. So, although we cannot easily do that with them, I suppose the thinking was that we would do it where we could. I think that is what it boils down to.

Senator White: Were there any recommendations from any bar association?

Mr. Maxwell: Yes, I would say so. The retirement age of the judiciary is a matter over which there is some controversy. Certainly I believe that most people today feel that the retirement age should be lowered. The fact is that there are still many people who are quite active and function well after 70; and of course, there are quite a few people who do not. Sometimes it becomes a problem.

The Acting Chairman: The difficult one is not going to listen.

Senator White: Mr. Chairman, may I refer to page 11, section 10, where provision is made for a pension to be paid to the widow of a judge? It refers to the children of judges in certain cases. Perhaps Mr. Maxwell could tell us what a judge gets, his widow gets, and what a child would get under that section.

Mr. Maxwell: May I ask Mr. McIntosh to answer that? He has worked it out, but I cannot read his figures.

Mr. H. A. McIntosh, Director of Legal Services, Privy Council Section, Department of Justice: Based on the 1972 salary of \$38,000 for a superior court provincial judge, that would be the \$35,000 plus the \$3,000 additional sum, the annuity for the judge himself would be two-thirds of that, which would be \$25,333.33. The widow's annuity, if he dies in office, would be two-ninths of that, which is \$8,444.44.

If the judge died after he retired, the widow would get one-third of his annuity, which is one-third of \$25,333.33, which is the same amount, \$8,444.44.

The children would each get one-fifth of the widow's annuity, which would give them up to a maximum of \$1,688.88 each.

Senator Cook: Up to what age?

Mr. McIntosh: Until they reach the age of 18 or go on to university, until age 25. This is in the definition of dependent children in the bill itself.

Senator White: One child will get one-fifth of \$8,444; is that right?

Mr. McIntosh: Yes, which would be \$1,688.88. The maximum is for four children. If the widow is dead or dies, the annuity to the children is doubled, which would make it \$3,377.76 each.

Senator Cook: It would pay him to stay at university.

Mr. McIntosh: Yes, I suppose it would.

Mr. Maxwell: There are some conditions attached to that. You cannot go beyond 25, and there is a requirement that they remain unmarried.

Senator Choquette: Senator Flynn left a few questions. The first is: Are the pensions of widows or widowers increased in proportion to increases in judges' salaries?

Mr. Maxwell: Yes. By that I mean that as the salary of a judge goes up the proportionate share to the widow goes up with it. It is based on a percentage of the salary.

Senator Choquette: The next question is: What will be the basis used in calculating the pension payable to those who have become or will become widows or widowers of judges between January 1, 1971 and the time when this bill is given Royal Assent?

Mr. Maxwell: We have included a provision that will enable the pensions awarded in that period to be revised on the basis of the new salary structure.

The Acting Chairman: In other words, they get higher pay.

Mr. Maxwell: Yes. The reason is that the salaries themselves are retroactive to the first of the year. Anyone who has retired and who has been given a pension will have that pension adjusted on the basis of the new salary structure.

Senator Choquette: The next question on behalf of Senator Flynn is: Does the superior court judge's accession to the post of supernumerary judge come automatically upon his election to give up his regular judicial duties?

Mr. Maxwell: Yes, I would say so. He has to elect to become a supernumerary judge if he is entitled to become one—that is, once a province passes the supporting legislation.

The Acting Chairman: Have any of the provinces passed the legislation yet?

Mr. Maxwell: I do not think they have. I know that several provinces contemplate passing it.

The Acting Chairman: If it were not limited, and without suggesting anything nasty about judges, you could have the whole court decide to be supernumerary, in which case they would draw their salary and could become supernumerary also.

Mr. Maxwell: You have to meet the conditions in order to become a supernumerary. You have to be 70 years of age and have served for 10 years.

The Acting Chairman: Yes; but there are a number of them in that category. I think of practically the whole Appeal Court of Alberta, with one or two exceptions.

Mr. Maxwell: Yes, there are a certain number there who could qualify.

The Acting Chairman: Would a province provide so many supernumerary positions?

Mr. Maxwell: No. The way this legislation is written, a province would have to provide a supernumerary position for each ordinary position on the court. You could not very well have a situation where one judge is permitted to become a supernumerary if he meets the conditions, and some other judge is not permitted to become a supernumerary if he also meets the conditions. That would hardly be fair. The option has to be open to all judges to become supernumerary if and when they meet the requirements.

I do not know that that should be of great concern, because the Chief Justice of each court can assign work to supernumeraries. It is not necessarily a holiday, by any means.

These provisions merely permit greater flexibility in the court structure. We think it will mean that there will be less requirement for continually adding positions, which seems to happen year after year.

Take the Ontario court, for example. There will be a number of supernumerary judges if the Ontario Government introduces legislation. Those judges will be available to help existing judges. There should always be a certain group, perhaps three or four judges, who are supernumerary on the court and available for other things.

We think it will lend flexibility. I know that Chief Justices are very pleased at the prospect of having this kind of talent available to them, to be tapped if needed.

Senator Cook: On that point, would a supernumerary judge have to accept an assignment as a royal commissioner?

Mr. Maxwell: No, I would not say that he would have to, but he would have to accept a judicial assignment.

Senator Cook: Any cases assigned to him, he would have to try.

Mr. Maxwell: Yes.

Senator Cook: But he would not have to become a royal commissioner.

Mr. Maxwell: No.

Senator Choquette: Continuing with Senator Flynn's questions, may a Chief Justice decide not to use his services?

Mr. Maxwell: Yes, it is within the discretion of a Chief Justice. I imagine what will happen is that those judges who are capable of performing good service after 70 years of age will be used, and some of those who perhaps are not so fit in this regard will not be.

Senator White: Mr. Maxwell, a few minutes ago you were pointing out that many people thought the arrangements had been made for judges to retire at 70.

Mr. Maxwell: Yes.

Senator White: Under this you are doing the contrary and are providing supernumeraries who cannot act until they reach age 70, but then they are going to carry on. One does not seem quite consistent with the other. Seventy is the age and that should finish it, if they are no further good or people think they have gone downhill.

Mr. Maxwell: The supernumerary system will permit those persons who are fit and useful, of whom there are quite a few, to perform services until 75; whereas it will also permit those who are not too fit and useful not to attempt to perform the services.

Senator Cook: To retire on full pay for five years.

Mr. Maxwell: It is just as well to have them on supernumerary as to have them on full pay and occupying an ordinary position.

Senator Cook: I could not agree more, but that is the other side of the coin.

Mr. Maxwell: Yes.

Senator Langlois: Could they also act on a part-time basis?

Mr. Maxwell: Do you mean, get full pay on a part-time basis?

Senator Langlois: Yes, suppose a supernumerary judge acts for three months in a year, he would not be paid for the whole year.

Mr. Maxwell: On that basis they probably would not become supernumerary.

The Acting Chairman: They have full pay and all the prerogatives, except they do not have responsibility for being ready for the regular roster.

Mr. Maxwell: That is right.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Is there any way in which a supernumerary judge could be relieved of that responsibility?

Mr. Maxwell: Of what responsibility?

Mr. Hopkins: Could he be removed as a supernumerary before he reaches 75?

Mr. Maxwell: He can always retire or resign. No, there is no way.

Senator Cook: If he became head of a separatist movement he could be removed.

Mr. Maxwell: Yes, he could be removed from office, of course.

The Acting Chairman: For cause.

Mr. Maxwell: Yes, for cause. They retain their status as a judge. All the things that apply to a judge apply to them, but the only thing is they would not normally be expected to do the regular work of the court, unless the chief justice requested they do so.

The Acting Chairman: Or if you have special cases that a particular judge is a good man to put on.

Mr. Maxwell: Exactly.

Senator Choquette: May I pursue the questions of Senator Flynn? Will this judge receive the same salary as an ordinary judge?

Mr. Maxwell: Yes.

Senator Choquette: Will his duties be the same?

Mr. Maxwell: To the extent they are assigned to him, yes.

Senator Choquette: Senator Flynn asked: If affirmative answers are given, then what is the difference between a judge who remains in office past the age of 70 and one who decides to become a supernumerary judge?

Mr. Maxwell: The only difference is that the one who does not elect to become a supernumerary will have to continue to take his ordinary assignments on the rolls, and so on, just as any other judge; whereas a supernumerary judge will have to hold himself open only for special assignments.

The Acting Chairman: Unless you have an overloaded docket somewhere, and this would then give the chief justice some leeway in order to get that cleared up.

Mr. Maxwell: Yes.

Senator Cook: A supernumerary judge, for instance, could not go down to the Barbados for six months, but he would have to stand by.

Mr. Maxwell: That is true.

The Acting Chairman: He would have to let them know where he was.

Senator Choquette: Is the only advantage the fact that if one opts to become a supernumerary judge the way is thus cleared for the Minister of Justice to appoint someone to the post this new supernumerary judge had vacated?

Mr. Maxwell: That is right. Once he becomes a supernumerary judge, then he leaves a regular post open for a fresh appointment.

The Acting Chairman: But he has to make the decision.

Mr. Maxwell: Yes.

Senator Gouin: Mr. Chairman, I would like to make sure I have understood the system of supernumerary judges. It is what I would call the case of a voluntary retirement or election to become a supernumerary judge once they have reached 70 years, and it will be for a maximum period of five years, to age 75.

Mr. Maxwell: That is true.

Senator Gouin: Am I right in saying that they may even resign during that period?

Mr. Maxwell: Yes, they may.

Senator Gouin: At their will?

Mr. Maxwell: Yes, at their will.

Senator Gouin: In Quebec, concerning our Court of Queen's Bench, we have a great many cases; at present 750. In criminal matters they are up to date because they are heard by preference. This system of supernumerary judges would facilitate the work. They could have more sittings and so on. However, in addition to that there are a certain number of additional judges appointed. Is it three or four for our Court of Queen's Bench?

Senator Cook: There are three additional provided for for the Court of Queen's Bench for the Province of Quebec.

Senator Gouin: And for the superior court, how many?

Senator Cook: Five.

Senator Gouin: And with regard to supernumerary judges, it is the province which has to decide?

Mr. Maxwell: If the province wishes to have the system apply to its courts, it will have to enact supporting legislation, which would be fairly general and would simply create supernumerary office for each judicial office they already have. Once that is done—and I imagine that will be done in most provinces—when the judge becomes 70 and has served a sufficiently long time, he can then elect, at his option, to become a supernumerary. That is the status that is in between retirement, on the one hand, and being a full-time judge, on the other.

Senator Gouin: He will receive full pay?

Mr. Maxwell: Yes, he will receive full pay.

Senator Gouin: For 1971 at a certain scale, and for 1972 the salary will increase, as is provided for other judges?

Mr. Maxwell: That is right. You see, senator, at the present time when a judge becomes 70 he can elect to retire, but then he is a retired judge and cannot do anything any more. He has either to retire or remain as a full-time judge carrying the full-time load. This supernumerary status will enable him to elect something that is in between. He does not have to remain a full-time functioning judge, yet he does not have to retire; he can accept an in-between stage and can continue to function as a judge, at the request of his chief justice.

Senator Gouin: The incentive is that as a supernumerary judge he receives full salary and might otherwise get two-fifths?

Mr. Maxwell: Yes, exactly.

Senator Langlois: Such election by a retiring judge upon reaching retirement age would have to be for not more than five years and not less than one year, I understand.

Mr. Maxwell: There is no limitation on how long he may hold the office, except that he cannot go beyond the five years. He cannot elect until 70 and has to retire at 75, so the maximum period for which he could be a supernumerary judge is five years. He could elect to be a supernumerary judge, act as such for six months and then decide that maybe he should retire, that he does not want to be even a supernumerary judge.

Senator Cook: But he cannot opt in and out.

Mr. Maxwell: Oh no. Once he is a supernumerary he cannot go back to being a full-time judge; he cannot do that.

Senator Choquette: It really creates a vacancy, and you will have many judges appointed as supernumeraries.

Mr. Maxwell: I should think there will be a number of vacancies.

Senator Choquette: I think it is a five-year holiday for which they are getting full pay, and the Government will appoint a lot of their friends to the bench. That is my opinion.

Senator Cook: That is a policy matter.

Senator Choquette: Maybe I should not express that opinion.

The Acting Chairman: That is a suspicious opinion.

Senator Choquette: Mr. Maxwell, does your department take recommendations now from local bar associations, or is it still a political appointment? Are you getting away from political appointments?

Mr. Maxwell: This is a rather delicate area. I can perhaps say that the Minister of Justice certainly does a great deal of consulting with the Canadian Bar Association committee. I do not want to get involved as an official in a political controversy, but I think a serious attempt is made to appoint without reference to political affiliation, as I see it. I would think a good many of the appointments demonstrate that. Perhaps I am wrong about it.

Senator Cook: That seems a good point at which to move that we report the bill.

The Acting Chairman: Yes, it is unfair to ask Mr. Maxwell to comment on that.

Is it agreed that we report the bill without amendment?

Hon. Senators: Agreed.

The Acting Chairman: Thank you, Mr. Maxwell, and your associates, for having come before the committee and cleared up these matters that have been bothering us.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT
1970-71

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Deputy Chairman*

No. 11

WEDNESDAY, DECEMBER 15, 1971

First Proceedings on the examination of the
parole system in Canada

(Witnesses—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Deputy Chairman*

The Honourable Senators:

Argue	Haig
Belisle	Hastings
Burchill	Hayden
Choquette	Laird
Connolly (<i>Ottawa West</i>)	Lang
Cook	Langlois
Croll	Macdonald (<i>Cape Breton</i>)
Eudes	Martin (<i>Ex officio</i>)
Everett	McGrand
Fergusson	Prowse
Flynn (<i>Ex officio</i>)	Quart
Goldenberg	Thompson
Gouin	Walker
Grosart	White
	Willis

30 Members

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 19, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laird, seconded by the Honourable Senator Cook:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier

Clerk of the Senate

Minutes of Proceedings

Wednesday, December 15, 1971.

(17)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:40 p.m.

Present: The Honourable Senators: Prowse (*Deputy Chairman*), Argue, Fergusson, Goldenberg, Haig, Hastings, Laird, Langlois, McGrand, Prowse, Quart and Thompson—(12).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Réal Jubinville, Executive Director; Mr. William Earl Bailey, Staff Member.

The Committee proceeded to the consideration of the following Motion by the Senate:

“That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada.”

The following witnesses, representing the Department of the Solicitor General of Canada, were heard in explanation of the motion:

The Honourable Jean-Pierre Goyer, P.C., M.P.,
Solicitor General of Canada;

Mr. J. L. Hollies, Q.C.,
Departmental Counsel.

At 4:00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, December 15, 1971.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 2.30 p.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Ladies and gentlemen, we are waiting for the minister, whose brief you have before you.

For the benefit of those who were not at the earlier committee meetings, I may say that our procedure will be the following. Today we shall hear the Solicitor General. Tomorrow we shall hear Mr. Street, the Chairman of the National Parole Board. Then we shall not hold any further public hearings probably until about February, depending on when Parliament returns from the Christmas recess. At that time we shall have some further presentations, perhaps including one from the Penitentiary Service, although we may not hear from them until later.

During the intervening period it is our intention to get in touch with the Attorneys General and Ministers of Justice of the provinces, and their correctional institutions, and to extend to them an invitation to appear before the committee. We shall also be in touch with the various voluntary agencies, of which there are about one hundred, presently engaged in what is called the after-care of prisoners, which would involve the parole and probation periods.

Following that we propose to invite organizations such as the chiefs of police associations, certain provincial courts' associations and other persons involved who might care to make representations to the committee.

In the meantime we hope to receive a number of representations from interested and interesting individuals, before winding up our proceedings by the end of April or early in May. We propose also to invite to appear before the committee certain people from whom we will have heard earlier, but from whom we may wish to hear further before the hearings conclude.

As our target, we hope to present a report before the summer recess. That is the general picture, which will be subject to change as the hearings continue.

Senator Hastings: So far we have two meetings scheduled, one today with the minister and one tomorrow with Mr. Street. I do not think that one meeting with the Chairman of the Parole Board will be sufficient, and perhaps we should schedule a meeting for Monday in order to complete our discussion with Mr. Street before the Christmas recess.

The Deputy Chairman: Mr. Street is here, and he and I have had discussions on this matter. The persons involved

have intimated their willingness to place themselves at our disposal on any reasonable basis. It is Mr. Street's intention to be present, or to have a representative present at all of the hearings, as he has a prime interest in what we are doing.

If it is impossible for us to complete our hearing with Mr. Street tomorrow, it will be possible for us to hold a further meeting with him. I will ask Mr. Street right now whether he will be available if we do not complete the hearing tomorrow.

Mr. T. G. Street, Q.C., Chairman, National Parole Board: Yes, of course, Mr. Chairman.

The Deputy Chairman: If we are unable to conclude the hearing tomorrow, there will be no problem. Thank you very much.

Are there any further questions from the committee arising from what I have said?

Mr. Minister, we are glad that you were able to obtain your parole from the other place for the purpose of attending this hearing.

Some Hon. Senators: Hear, hear.

The Deputy Chairman: Honourable senators, we have with us the Solicitor General of Canada, the Honourable Jean-Pierre Goyer. He will make an opening statement regarding the position of the Solicitor General's Department. Accompanying Mr. Goyer, to assist him in answering questions, is Mr. J. L. Hollies, Q.C., Departmental Counsel, Department of the Solicitor General.

Without further ado, I now call on the Solicitor General to make his opening statement.

[*Translation*]

Hon. Mr. Goyer: I welcome the study on parole that you have initiated especially as the study occurs at a time when we are undertaking a total revision of our departmental policies.

The Department of the Solicitor General is essentially a social defense department aimed at crime prevention, protection of the society and the rehabilitation of social deviants. There are three agencies responsible for these objectives, the R.C.M.P., the Canadian Penitentiary Service, and the National Parole Board and Service.

The Parole Board and Service being an essential part of this social defense network, it goes without saying that any reforms or changes implemented in either of the three agencies will certainly affect the policies and activities of the Parole Board. Therefore, the study that this committee

has initiated must take into account the overall objectives and reforms of my Department.

When the Parole Board was established in 1959, the Canadian Penitentiary Service was a highly centralized and rigid service whose aim was chiefly the punishment of the individual. A direct consequence of this was that there was practically no communication between the inmates and personnel, very little participation from the general public, and very few programs carried out inside the institutions. Also, at that time pre-release programs were non-existent.

However, we have recently reviewed our policies and the result is that the penal system is now oriented toward the resocialisation of the individual, and, this on a more decentralized basis, in various types of maximum, medium, and minimum security institutions, pre-release centres and half-way houses.

In recent months, we have increased the application of the "living unit concept" and the result will be that the inmate will no longer be depersonalized as he will be in constant communication with his correctional officers.

The Canadian Penitentiary Service has also developed temporary absence programs and pre-release programs, in order to facilitate the inmate's re-integration into society.

We have also recognized the need for public participation in opening the institution to visitors and to those interested in inside programs for the inmates. In addition, my Department has negotiated a general agreement with volunteer agencies whereby the Federal Government purchases services from approximately 40 private agencies across the country to help in the rehabilitative process of the inmate.

For these reasons, it is imperative for your Committee, at the outset of its study of the National Parole Board and Service, to take that new fact into account. I humbly submit that our guidelines in the field of parole must be reviewed thoroughly. At this stage, we cannot be satisfied with mere amendments to the Law or changes in regulations, as it was done in the past.

There has certainly been a lack of rationalisation in this field and there is an obvious gap between the Parole Board and its services and the Canadian Penitentiary Service.

The system is very intricate as both the Penitentiary Service and the Parole Board have jurisdiction, although according to different regulations, to release, the inmates, in some way or the other. For example, the Parole Board has certain day parole programs, the Penitentiary Service has temporary absence programs. Should these not be integrated?

The Parole Board has the exclusive jurisdiction and absolute discretion to grant, refuse or revoke parole for any adult inmate in a federal or provincial institution who is serving a sentence under federal statute. Now that correctional officers are "living" with inmates and that psychiatric and psychological services are more adequate, perhaps we should establish local "parole boards" with the possible participation of penitentiary authorities and other advisers that deal with the inmates (volunteers, educators, specialists . . .)

May be then, the National Parole Board could develop parole criteria and directives, supervise the system to assure uniformity and efficiency, act in certain categories of crime, or in cases where parolees have violated their parole, and also serve as an appeal board.

This raises the question of the amalgamation of the Canadian Penitentiary Service and the National Parole Service. If this amalgamation is to take place we are faced with deciding the best means for its implementation.

This more unified system would perhaps help avoid the feeling of insecurity which the inmates develop when faced with this compartmentalized administrative structure. We must not forget that many inmates have committed crimes as a result of insecurity and surely we do not want to intensify and perpetuate this feeling.

As a result of various legislation, for example, earned remission, statutory remission, or parole itself, the sentences imposed by judges become practically meaningless and are more and more equivalent in the mind of the judges to indefinite sentencing. Coordinated release criteria would have a direct effect on sentencing. Once the accused has been proven guilty through the normal judicial procedures the legal conception of the criminal act should then be paralleled by the subjective element, that is, the examination of the personality of the offender in order to decide what specific treatments will effect his re-education and resocialization and thus better protect society in the long run.

One thing is definite: penitentiaries are necessary. Many social deviants need to be isolated from society, both to protect society and to help them to resocialize themselves and to become law-abiding citizens. The public has been very critical of our penal system but society must also play its role. The Government has a key role to play but I think that society has a duty to participate to help change the system.

In fact, the public is an indispensable partner in the programming and testing of social reforms. I do not think that the government should expand its administrative structure by employing a large number of civil servants but rather that society should undertake to develop and implement programs. These contacts that the inmate has with individuals outside the institution are necessary if he is to rehabilitate himself. I would therefore like the committee to consider the question of public participation and to determine whether maximum use is made of volunteers.

The importance of employment in the rehabilitation process has always been understood. Are employers sufficiently informed of the activities of the parole services? Are employers encouraged, as much as possible, to participate in rehabilitation programs?

I believe that it is extremely difficult to assess some of the programs already undertaken because of a lack of statistical data in the area of parole. The Department, however, needs to know what are the best statistical tests for gauging the success and failure of parole and I look forward to any recommendations your committee might have on these matters.

I have established within the Department a task force which will look into the problems of the parole system and at the same time study the responsibilities of the penitentiary services with regards to release programs and granting of parole, problems mentioned earlier.

I do not want a duplication of studies. The task force will serve as a complement to the work of your Committee in that it will research in greater depth certain problems which require close attention.

I hope that this brief exposé has given you an insight into our problems as they exist at the present and has indicated questions on which we need suggested answers if we are to remain at the vanguard of reform and progress.

[Text]

The Deputy Chairman: Thank you very much, Mr. Minister. I presume that you will now be available to answer questions from the committee.

Hon. Mr. Goyer: Yes, Mr. Chairman.

The Deputy Chairman: May I suggest that the questions be directed to the minister? Then, if he wishes, he may have Mr. Hollies answer.

I will call on Senator Laird to lead the questioning.

[Translation]

Senator Laird: I would first like to express our appreciation, Mr. Minister, for your appearing before this Committee. Frankly, I shall put the questions in English, if that is acceptable to you—

Hon. Mr. Goyer: Certainly.

Senator Laird: —because I know you have a thorough knowledge of the other official language of Canada.

[Text]

The first thing this committee would be interested in, since we will receive details of operations from the Parole Board, is to have you go as far as possible in matters of principle. For example, what relationship do you contemplate between the federal and provincial authorities in connection with the whole problem of parole?

[Translation]

Hon. Mr. Goyer: This question is of interest to us and, of necessity, to the provinces also. Unofficial consultations have been held during research carried out in co-operation with the provinces, but financed by the Solicitor General's Department.

For example, I think we can say that generally the provinces would like to have their own parole services.

Once again, the informal consultations which we have held have shown us that, in the case of New Brunswick, for example, that province would be interested in having its own parole jurisdiction and service.

Saskatchewan has not yet said exactly where it stands.

Prince Edward Island presents a special problem. It appears that at this point the parole service and the provincial probation service could be united to become a single integrated service, financed by both levels of government.

The case of the Northwest Territories naturally presents some difficulty.

Alberta appears to favour a provincial parole board.

In Ontario, of course, and in British Columbia, because of existing provisions in the law, these two provinces have

their own parole services, but only for indefinite sentences. Ontario clearly indicated that it wished to extend its jurisdiction over all sentences of provincial right—so, I think, did British Columbia.

In view of this, I feel that this could certainly be the subject of a discussion, at a federal-provincial conference, to decide on just what shape it would take. In any case, this would implement one recommendation of the Ouimet Report. I think it would also be in accord with a new spirit which could be introduced into the parole system, if we accept as a basic principle—this question is undoubtedly central to your study—if we accept as a basic principle that the services of the National Parole Board should be decentralized, and a certain measure of jurisdiction conferred on local authorities, in which there could possibly be participation by citizens.

If I may, I will take the opportunity presented by your question simply to add this: in my opinion, participation by citizens is absolutely necessary. The Board's work as a whole has often been subject to criticism by the public, often because the public has been poorly informed. The best way to inform the public is still to have them participate in decisions, and if a way could be found—and I feel this is a question that would definitely interest your committee—if a way could be found, if we are agreed at the outset that the system should be decentralized, or that citizens would be asked to participate in decisions, then the public would feel it was much more involved, and much more capable of assessing the difficulties presented by parole.

To conclude my answer to your question, I would make a comparison. In our legal system, in criminal cases, provision is made for a jury, and this jury is of necessity composed of ordinary citizens who are nonetheless frequently called on to decide cases which are of paramount interest to citizens, and yet we rely on them to do so, under the Court's guidance of course. Well, I wonder whether we might not find a similar concept that would apply to parole cases.

Senator Laird: Thank you. Next question, please.

[Text]

The National Parole Board, of course, comes within the purview of your department. However, as we read the act, it seems to be an autonomous body. Is it a fair question to ask whether or not you give any guidelines to the National Parole Board in carrying out its work?

[Translation]

Hon. Mr. Goyer: I would not like to set myself up as a legal adviser, because I think there might then be a conflict of interests, and I feel that, to describe the Department's responsibility towards the Board, Mr. Hollies, the Department's legal adviser, could answer you; then perhaps I could comment on my working relations with the Board, if of course this is all right with you, Mr. Chairman.

[Text]

Mr. J. L. Hollies, Q.C., Departmental Counsel, Department of the Solicitor General: I am not sure whether I should thank you or not for suggesting that I add a few comments as to what the future might be.

I think it is beyond doubt that the exclusive jurisdiction in any particular case to grant parole, to revoke parole, to suspend parole or declare parole forfeited, to issue the necessary warrants of apprehension or parole certificates, as the case might be, rests with the National Parole Board.

The acts setting up the agencies with which the minister is charged—that is, the Royal Canadian Mounted Police, The Canadian Penitentiary Service and the National Parole Board—differ in one particular aspect. With respect to the Royal Canadian Mounted Police and the Canadian Penitentiary Service the words “under the direction of the minister”, or equivalent words, are used. The act setting up the National Parole Board does not use these words. I would suggest that this is a clear expression of the intention of both houses that the board be autonomous. Nevertheless, I would submit that the view in law, and necessarily in practice, is that the Solicitor General is charged with the overall direction of management of the National Parole Board in the same way as he is with any other agency entrusted to his care and direction. Does that answer your question?

Senator Laird: Yes it does, thank you.

Mr. Chairman, I will pass now, and give others an opportunity to ask questions.

Senator Quart: I have a question Mr. Chairman.

[Translation]

Mr. Minister, you spoke—I know you are bilingual and you speak English much better than I speak French—so I am going to continue in English.

[Text]

Hon. Mr. Goyer: I do not want to contest this.

Senator Quart: Oh yes, I do. You mentioned about volunteer agencies and the fact that you wanted more public participation. You went on to say that the Government purchases services from approximately 40 private agencies across the country to help in the rehabilitation process of inmates.

Is that all set up now?

[Translation]

Hon. Mr. Goyer: Yes, I think that two years ago we made an arrangement with private agencies, and we have come to complete agreement with all the private agencies in Canada; this has worked very well for two years. As a matter of fact, there are private agencies which now call on us for more financial aid, and we hope to provide this if possible. Moreover, if we really believe in participation by the public, I think we should not only finance the professional services provided by the agencies, but perhaps we should also finance promotion agents who could assist these agencies in developing programmes involving volunteers, in such a way that the public is really prompted to take an active part in parole, and that this might not be merely a matter for the experts, but also for the ordinary citizen who feels he has a duty to perform to the society he lives in, namely to help the less fortunate; I am speaking here in a social sense.

Senator Quart: Among the 40 organizations, do you have associations like, I mean social clubs, like the Kiwanis, the

Optimists and others, because during the war I know they did a lot of rehabilitation, that is, among the 40 agencies have you many social clubs?

Hon. Mr. Goyer: No. Up to now social clubs have financed themselves, and I would add, very well indeed. It is very desirable that this continue along these lines, and though social clubs do not supply professional service as such, they do, I repeat, have an extremely important role to play in the rehabilitation field, and they perform it on a voluntary basis, which sets a great example.

Where private agencies are concerned, since they often provide professional services which also involve voluntary programmes, they must be given funds for professional services. Here, again, our financial aid will perhaps have to be increased, to help them improve their organization and do their recruiting in their working environment. I think that, whether we like it or not, people want increasingly to be paid for the work they do, and it is to be expected that professional services should be paid for. If we do not pay the voluntary agencies we have no choice at this point but to recruit more personnel. I think, personally, in the isocial field we work in, with people we are trying to recycle or resocialize, I think that, basically, the public has a very important part to play. I don't think this problem can be solved by paid government officials. They may serve simply as staff, they may furnish expert advice, they may possibly act as a promotional force, but essentially the work has to be done by the public itself. Personally, in this field of government I do not believe in an administrative superstructure made up of a huge staff.

Senator Quart: Thank you, Mr. Goyer. I have other questions, but I shall wait till a bit later.

[Text]

The Deputy Chairman: Senator Fergusson, do you have a question in the same area?

Senator Fergusson: In reply to Senator Laird the Solicitor General referred to studies that had been done in various provinces and in the Territories. I would be interested to know if the results of those studies are available to the public.

[Translation]

Hon. Mr. Goyer: Yes, they are. As a matter of fact, we have published the findings of this research, and we will certainly be sending you copies, as well as to any member of the public who is interested in the matter.

[Text]

Senator Fergusson: I was interested in the one from New Brunswick. I have been trying to get it, but I have not been able to lay my hands on it.

[Translation]

Hon. Mr. Goyer: Ah yes, well, that is a department which is often obsessed with secrecy, as you know; you will certainly have an answer to your question today.

[Text]

Senator Quart: I would like to ask one small supplementary.

[Translation]

Could we have a list of the 40 agencies?

[Translation]

Hon. Mr. Goyer: Certainly. With the Chairman's permission, we will table this document.

[Text]

The Deputy Chairman: Would it be possible to give us an idea?

The committee would appreciate that. We will have it distributed when we receive it. The same applies to reports. The Committee's staff will contact the Solicitor General's staff, will pick up any reports that are available, and will distribute them.

Senator Thompson: I wonder if I may come back to the answer given by the Solicitor General with regard to the autonomy of the Parole Board. It was suggested that there could be a conflict of interests involving the chairman and the members of the Parole Board, in that the chairman is also responsible for parole services. Would the Solicitor General care to comment on that?

[Translation]

Hon. Mr. Goyer: Yes; I think that the two services—that inside the Department at this time we are too compartmentalized. It is something like Brel's song about the boss women, each of whom has her own charges, is jealous of her charges, and doesn't want anyone else to discuss them.

I think that this, to some extent, is what you find not in a malicious or destructive way, but you know to what extent the departments, and agencies, are jealous of their rights; it is always a problem to get the departments and agencies to co-operate. There are good reasons for this. I think it is quite natural for this to happen. I think the difficulty right now is that prisoners come under the penitentiary services when such prisoners are in an institution, even when they occasionally have leave, or even when they go to work outside, and stay in pre-release centres; or, because the National Parole Board has decided to allow certain individuals to move to a pre-release centre that is under the National Parole Service, or because the individual has been let out on parole. At this point, he is confronted by another organization, by other individuals. I feel that this makes for a climate of insecurity in an individual; with some members of the society, this is serious. It is because of this that I submit to your Committee that it would be worth looking into this question, namely, whether there would be any advantage, or what the disadvantages would be; in combining both services, making the National Parole Service part of the Penitentiary Service, in such a way that there might be the same real continuity of interest, so that the prisoner always feels quite secure, and does not experience any sudden break in the treatment that begins as soon as he receives his sentence, until he is free from any restriction, until he becomes a free man.

[Text]

Senator Thompson: Mr. Minister, I appreciate this emphasis on team work, even as regards probation officers at some point having the experience of working in an institution.

Perhaps I did not express myself properly. My concern is that the Parole Board is in a sense a quasi-judicial board and, therefore, I am wondering whether or not you have a situation where the judge of this quasi-judicial board, Mr. Street, is also in charge of administration.

Do you see any parallel between this type of situation and that where a judge is also responsible for the policing of the community?

[Translation]

Hon. Mr. Goyer: Basically, no. I think that there was justification at that time for the National Parole Service to come directly under the Chairman of the National Parole Board, because of the situation I described, that when the Board was established in 1959 the Penitentiary Service was certainly not what it is today, but was centralized, rigid, lacking communication with the prisoner, etc. Hence, it was on the whole an oppressive and punitive service.

I do not think such people would have been able to do positive work with the prisoner. If, however, we take the approach, from this point, that a positive work of rehabilitation must be done in institutions, this would square very well with the functions of the National Parole Board from his administrative responsibilities, and enable him to concentrate on decisions to be taken regarding release of prisoners.

Is that more precise, this time, Senator?

[Text]

Senator Thompson: Thank you very much, sir.

I have another supplementary on this subject, Mr. Chairman, but perhaps someone else has a question.

The Deputy Chairman: The practice we are going to try to follow is to stay with one subject rather than having one person speaking on several subjects. If you have another supplementary on this subject, Senator Thompson, I suggest you put it to the minister.

Senator Thompson: Mr. Minister, is there the right of appeal from a Parole Board decision; and, if so, to whom?

[Translation]

Hon. Mr. Goyer: At the present time there is in fact no appeal from the Board's decisions. You could say that in specific cases there are reviews of the Board's decisions; this happens when a person is sentenced to death, and his sentence is commuted to life imprisonment; or when his sentence is life imprisonment. In such a case, if the Board's decision is unfavourable, it must be submitted to the Cabinet which, as you are aware, makes the decision in the last resort. Otherwise, there is no appeal. This is undoubtedly a matter of interest to your Committee, that is, should there not be an appeal from the Board's decisions? This is why it is connected with the problem of whether the system should be decentralized, and whether a system of local parole boards is acceptable. Then the National Parole Board, as it now exists, could act as an appellate court or appeal board, or some other arrangement could be considered. However, I think that, basically, in our political system, it is a good thing for decisions to be

reviewed, because all of us, individuals and agencies, are subject to error, and I think we must accept the fact that our decisions may be reviewed.

Senator Goldenberg: Mr. Minister, the Act creating the Federal Court gives it the right to review administrative decisions. Doesn't this cover the National Parole Board?

Hon. Mr. Goyer: I will let Mr. Hollies reply to that question, Senator.

[Text]

Mr. Hollies: In reply to the honourable senator's question, I must, with the greatest deference, say that my understanding of the Federal Court Act differs in one material respect, and that is that the provisions vesting the Appellate Division with the power to review decisions arrived at by boards, tribunals, or other emanations of the Crown are, according to my understanding, limited to those decisions which must be arrived at on either a judicial or a quasi-judicial basis. I believe it is section 28 of the act which says, and I am paraphrasing it, "other than a decision which is not required to be taken on a judicial or quasi-judicial basis".

When that act was in the process of being developed and when the regulations under the act were in contemplation, we inquired of the senior law officers of the Crown as to whether an exemption should be sought specifically for decisions by the National Parole Board. We were assured at that time that because of the way the act was framed such a specific exemption was quite unnecessary because the board was not acting in a judicial or quasi-judicial capacity.

I mean no disrespect to Mr. Street, who I see sitting at the back.

Senator Goldenberg: But he was a magistrate.

Mr. Hollies: Yes, and he would now be a provincial judge.

In law I believe it is recognized as an administrative decision reached by the National Parole Board and, therefore, is not within the ambit of the review provisions contained in the Federal Court Act.

The Deputy Chairman: Are there any other questions in this area?

[Translation]

Senator Hastings: Mr. Minister, excuse me if I do not speak in French, but when I finish my French courses, I will speak in French, very soon.

Hon. Mr. Goyer: I hope, nevertheless, that your work will be completed before you have finished your courses.

[Text]

Senator Hastings: Mr. Minister, I would first like to express to you, on behalf of my "constituents," the 7,000 inmates across Canada, their appreciation for the steps you have so boldly taken within the last six months with regard to penal reform. I was in Stony Mountain last night and they are all awaiting the time when you will start paying them the \$1.75 an hour.

Hon. Mr. Goyer: Out of my own pocket?

The Deputy Chairman: They really do not care!

Senator Hastings: Is there any consultation, Mr. Minister, between the federal and provincial cabinets with respect to the parole of offenders? Specifically, I am thinking of imprisoned members of the F.L.Q.

[Translation]

Hon. Mr. Goyer: No, there is no policy set by the federal Cabinet. Therefore, no consultations took place between the federal Cabinet and the provincial cabinets. The government has never indicated to the National Parole Board how it should deal with these problems. That is, I guess the Board considers such cases to be ordinary cases.

[Text]

Senator Hastings: I stand to be corrected, but I believe the Board consulted the Minister of Justice of the Province of Quebec with regard to a recommendation in connection with parole. I understand it is the only province in which the Attorney General or Minister of Justice is consulted. I wonder why this procedure is used with respect to Quebec?

[Translation]

Hon. Mr. Goyer: The Board obviously made that decision on its own. I can not speak for my predecessor but, as far as I am concerned, I have assumed my present position, given directives requesting that a province or the Minister of Justice of any province, be consulted. As a matter of fact I have never given directives to that effect which would apply in any general way or in any particular instance.

Now, should the Board resort to such practices? I would imagine that the Board wants to be well informed before making a decision and therefore if it considers that it requires additional information from a police chief, or a minister of Justice, or from ordinary citizens, then, I believe, it is up to the Board to decide of the procedure to follow.

[Text]

Senator Hastings: In the fiscal year 1970-71 the Province of Quebec, which has approximately 30 per cent of your 7,000 prison population, runs below average with respect to number of day paroles granted. Only 11 per cent were granted day paroles in the province. 10 per cent of the temporary absences in the same period were granted in the Province of Quebec and 25 per cent were granted parole, which is considerably below average. I believe they have just as good an inmate as the rest of Canada.

I wonder if you would make an observation as to why that condition would exist?

[Translation]

Hon. Mr. Goyer: I admit that I am still at the stage of asking myself that question. I still have not found an answer, which is a matter of concern, because I see no particular reason why, as you have pointed out, prisoners in federal institutions in the province of Quebec are more special cases than anywhere else. It could perhaps be explained on sociological grounds, which affect our staff

as much as the prison environment, and this is perhaps attributable to our political society, which is less willing to take part in the rehabilitation field; I don't know. Like you, I am simply asking myself this question. At the administrative level, I have already asked the penitentiaries' Commissioner, in consultation with the staffs in our institutions, to give me a report on the matter, but I have not yet received it.

[Text]

Senator Hastings: You mentioned in your remarks, sir, that you still believe that penitentiaries are necessary. Do you believe that 400-man institutions serve any useful purpose or function in fulfilling the objectives of the Penitentiary Service?

[Translation]

Hon. Mr. Goyer: No—and we have received the Mohr Report on maximum security institutions. I hope to be able to make this public during January. I think we will then be better informed on what an institution should be from now on. It is with this in mind that we have, as you know, held up work at Mission, in British Columbia, so as completely to review our building programme, as it does not seem to correspond at all to the concept of modern phrenology (sic).

I say that prisons are necessary—we could say unfortunately necessary—but I think that the qualifier would be pejorative. If they are necessary, they are necessary, that is a fact; they are needed for a certain class of individuals who take advantage of their fellow-citizens, because they do not know how to make use of their freedom or because they have no respect for the laws which society has set up for itself.

There will then be the job of re-education, and I think this must be undertaken with some measure of security. Unfortunately, our society has not developed to the point where it can absorb every type of criminal. I don't know whether some society will one day be able to do so.

However that may be, we are dealing with the reality that these individuals must be kept in prisons, and even in maximum security institutions. I have no objection to this. I have no hesitation in saying that our penitentiaries must have full maximum security in the case of difficult criminals who are dangerous to society, so that such individuals cannot contemplate escaping from these institutions. The reason is quite simple: experience has shown that, if security measures are not properly enforced, are not satisfactory, and do not guarantee that escape is practically impossible, the prisoner thinks only of making plans to escape, and he greatly reduces his participation in the program inside the institution.

Experience therefore has shown that if the area is very well guarded, then the individual inside the institution will be more likely to find out for himself that he must resocialize himself, and that he must learn to live in society, to respect the country's laws and respect his fellow-citizens. This is what I meant when I said that prisons were necessary. It is simply a question of adapting the prisons to each individual.

This means that great flexibility is definitely the answer to our needs, providing maximum, medium and minimum

security institutions, pre-release centres and halfway houses, etc. The more we can meet the needs of each individual, the closer, I feel, we will be to the possible re-adjustment of that individual.

[Text]

Senator Hastings: I agree with you, sir, that institutions will always be necessary. My question, however, was: Will 400-man institutions serve a useful purpose? From my experience and limited knowledge I believe that society completely defeats its purpose by putting men into these institutions and expecting them to re-orientate or re-socialize themselves.

As a parallel, surely we have learned from our experience over the years during which we admitted our mental patients to huge, monolithic structures and assumed they would be looked after properly. We did not know what was being done or how that goal would be accomplished.

We are living in a more enlightened age, with more enlightened procedures regarding patients; we keep them close to their families and society. In the Province of Alberta, or in Calgary at least, they are not even going to have psychiatric wards; they will be kept in the hospital, close to society.

[Translation]

Hon. Mr. Goyer: With regard to psychiatric cases, this is now under study. I have formed another task force, this one made up of psychiatrists, on the recommendation of the Canadian Psychiatric Association. This group will submit a report during December or January as to the type of institution that should be developed. Should we hire the provincial services? Should we have separate units? Should we have hospitals attached, for instance, to veterans' hospitals? Should there be hospitals inside the institutions themselves? Could we use the equipment we now have? etc.—the whole range of possibilities. This work is being done in close co-operation with another task force consisting of three economists, which will study the financial implications of the psychiatrists' proposals, because the psychiatrists could present us with ideal solutions, of course, but it is very important to have an estimate of the cost, not only of construction of these institutions, but of operating them as well.

When I took on the office of Solicitor General, we were going to inaugurate a program of building psychiatric centres, and when I asked how much it would cost, I was given figures, whereas, when I asked how much the operating expenses would be, no figures were available. It was at this point that I decided to form a task force to study this question.

An experiment is under way in Quebec, where a psychiatric institution has been built; operating expenses are about \$29,000 a year per prisoner. Perhaps this is the cost that must be borne. However, I think we must be given more information, that the public must be given more information, if we are prepared to make this expenditure, and if it is among our priorities. This is why I am awaiting the report; then we will definitely consult to decide what type of policy we will establish.

[Text]

Senator Fergusson: This deals with the matter of penitentiaries and their size. I believe there are many studies which show that very few women convicts are dangerous and require to be kept in maximum security. Mr. Minister, why is it that in Canada we continue to keep our few women convicts in maximum security fortresses?

[Translation]

Hon. Mr. Goyer: We have examined that problem. There are various solutions available: some entail difficulties because legislation would be necessary, and others because we would have to invest in new equipment. Certainly—I think there are 97 women at Kingston—but certainly as a general rule, these cases, I would not say as a general rule, perhaps 50 per cent of these cases present serious difficulties, in the sense that it is very unlikely that the provinces will agree to accommodate these persons in their institutions, for two reasons that I can think of. The first is that the provinces have simple and short term cases in their institutions. Thus, bringing a really hardened criminal into the environment, this person would be subject to continuous confinement in the solitary block. Also, if such a person is in prison for a long term, this may destroy his morale, when he sees that the turnover throughout the provincial prison, which is perhaps from a year to 18 months, at the outside, when he sees, I say, everyone leaving and himself always being left behind, this could create a moral problem for the individual. I think this is why it will always be necessary to have a central institution, central because the number is very limited, to treat very difficult cases.

However, in order to hire provincial services, there would have to be legislation. Until legislation can be obtained, I think that an effort must be made to improve the conditions at Kingston, to make them as humane as possible. We have been working overtime on this problem, and have made a much larger investment of money this year than in previous years to improve prison conditions. I think that, for the moment, it is not practical to legislate simply to settle a problem of law, because, when you legislate, you must nevertheless have sufficient problems to submit to Parliament to propose a law, and then make possible general discussion on all the implications of that law.

[Text]

Senator Fergusson: Mr. Minister, I cannot see how any changes which might be made in Kingston will make it a suitable place to keep women prisoners. I do not feel it is the kind of institution in which you should keep women prisoners.

[Translation]

Hon. Mr. Goyer: I agree with you that this is not the ideal solution. The same thing could apply, for example, at Dorchester; as you know, we do not have any plans for changing Dorchester in the near future; this will perhaps be in a couple of years. Further, if you look carefully at what we do know, Merivale, not Merivale, but New Westminister, there is a decision in that matter that will be made very soon. This means that, in the case of the

women's prison, I hope that a couple of years hence the matter of jurisdiction will be settled and we can look forward to a complete change, not only in the institution, but also in internal arrangements, between governments.

[Text]

Senator Fergusson: Thank you, Mr. Minister.

Senator Thompson: Pursuing this matter, to a degree I think you have answered the Ouimet Report which suggests that instead of bringing women to Kingston you make arrangements with the provincial services. With regard to French-speaking people, and especially women with children, who would normally go to Kingston, this is a onley experience, and it is felt that they should be kept near their homes.

From the point of view of rehabilitation, I appreciate your answer. I understood that two years-less-a-day was going to be the responsibility of the provincial government, and that the federal government would take over the other areas. What is your feeling with respect to tthat situation? Have negotiations begun with respect to the jurisdiction of prisons?

[Translation]

Hon. Mr. Goyer: Well, exactly, this extends the scope of the question that was asked, namely: is it worthwhile to change a law when you simply want to alter one or two sections? To my mind, and I have not yet made a decision on this, but at any rate the direction, if you will, of my thinking on this matter is that it is time for us to sit down with the provinces and give general consideration to the correctional question in Canada, that is, the Canadian correctional system, and ask ourselves questions that are as basic as those you indicated. Should jurisdiction be based on the length of sentences, or should it be on the type of sentence, or on some other basis, namely, when the sentence is purely punitive, this could be, internally for instance, the responsibility of the provinces; when the goal is rehabilitation, this could be under federal jurisdiction, etc. So, I think it is time for these questions to be asked.

There have been various recommendations, the latest in the series, I think, being to make sentences of two years or more federal, and those for one year or less provincial. In addition, that the courts not give sentences of between one and two years. Now, there are various methods. I would not like to get into this, only to say that I think we are coming to this juncture.

[Text]

Senator Thompson: Could I just follow up on what Senator Hastings said? I noticed that in your last annual report there was a breakdown of maximum and minimum security; I think it was something like 25 per cent, or it could even be 50 per cent, minimum security, and then other areas were dealt with. As I understand it, in other jurisdictions, in Britain and so on, in the breakdown of offenders into maximum and minimum there is not as high a proportion of maximum as in Canada; there is a considerable difference. I realize it is not satisfactory to make comparisons with other jurisdictions, yet I wonder if you feel our method of assessing whether a prisoner should go to a maximum security prison is entirely satisfactory, and

whether any research is being done to get a better assessment in allocating where a prisoner should be.

[Translation]

Hon. Mr. Goyer: As Mr. Hollies mentioned, it is difficult to make comparisons since England has a unitary form of government while we have divided jurisdictions; anyway, I believe that there is a consensus among our staff, experts and private agencies that there are too many people in our maximum security institutions and that we could easily reduce the population of such institutions.

I believe that the Mohr Report discussed this matter and made recommendations which, in my opinion, may be the answer to the problem we are faced with.

[Text]

Senator Quart: Mr. Minister, over the last several months you have been making a great many statements about penitentiary inmates, pay provisions, grooming regulations, and perhaps even wall-to-wall carpeting, although perhaps I am exaggerating in saying that. Except for one or two instances, you have not mentioned the Parole Board or parole matters. Was there any reason for that? Have you had any special criticisms about the Parole Board?

[Translation]

Hon. Mr. Goyer: No, this is simply a matter of priorities, therefore of practical necessity, for it was really impossible to tackle all these things at once. I thought it was more logical and practical to undertake penitentiary reform first. This is the very basis of the whole system, because, if the penitentiary personnel are only making inmates into criminals again, then this of necessity will have repercussions on the work of the National Parole Service. So, an environment had to be created which would make the work of resocialization possible from the outset, and this could be followed by other services. So, on these lines, I thought it was preferable to undertake a thorough reform of the penitentiary system. This we did. This does not mean that everything is set up, but we are now functioning on the lines I described to Parliament a month or two ago. What we have to do now is follow up, in the same spirit, observing the same basic principles, and bearing in mind the new order we will be establishing inside the institutions. We now have to tackle the question of the National Parole Board and the National Parole Service.

Having said this, I am not in the least criticising the way in which this was done in the past. I think that, in 1959, that was the statute which best suited the situation at the time, and within the meaning of that statute, under its terms, with the powers conferred by the statute, the National Parole Board and the National Parole Service have done an excellent job. I think they deserve our support, and the public should be better informed on the work which has been done by the Board and the Service.

Having said that, as I mentioned in my statement, conditions have changed in the penitentiaries, and in the due course of things this should be reflected in the parole system. I hope you will approach your work with this in mind because, once again, I think there is unity, there has to be unity of thought within my department. It is not

merely a department for "hardware", but also for "software".

[Text]

Senator Thompson: I should like to ask a supplementary question on that. With your emphasis on parole, I very much admire what you are doing, but I should like to ask whether your department or other government departments employ parolees.

[Translation]

Hon. Mr. Goyer: That is another very good question. You might also ask me, do you have a woman in your senior staff? There is one on the National Parole Board; there are some in our penitentiary services, but on the level, of necessity on the employee level, for example, nurses and classification officers; but there are no senior officers. This is unfortunate in both cases. Experience shows—in Canada, where we have had very limited experience, as in other countries, Holland, for instance, where wide use is made of women, to an increasing degree, the experiment has had very positive results. At the Pinel Institute, in the province of Quebec, for instance, where the most difficult cases are treated, the most difficult psychiatric cases of a criminal nature, there are many women working in a community environment, that is, having direct contact with sick inmates. The experiment has had very good results.

I think that having people who have done time in institutions could also clarify our thinking in many areas. For example, I am thinking of just one possibility. It seems that many of our ex-inmates return from time to time to the institutions to talk with the staff, and especially to prerelease centres to see the staff, etc. You have to conclude that such people, their basic problem is often a problem of insecurity. Many such persons have asked for accommodation, because they doubtless felt they were in a crisis situation, in a state of temporary insecurity. Unfortunately we do not have, it is not possible, under the regulations as they now stand, to provide it. However, I don't see why we could not let, why we could not provide such individuals with the possibility, when they themselves feel they are in a crisis situation, of re-entering an environment in which they feel more comfortable, and perhaps the ex-inmate could work there in a way that would rebuild their morale. I think they would be in a better position there to play positive roles.

[Text]

Senator Thompson: You are a very enlightened minister.

Senator Fergusson: When an inmate comes up for parole, does he have any legal representative with him or does he just plead his own case?

[Translation]

Hon. Mr. Goyer: No, there is no representative, there is no lawyer, as such. Further, as Mr. Hollies pointed out, the decision taken at that time is not a judicial, but an administrative, one. However, when decentralization has taken place—this has been decided upon, if this is one of your recommendations—if the system is decentralized, then it will perhaps be possible, not to provide a lawyer's

services, as such, but perhaps social workers could help the inmate in whatever steps he might take. That remains to be seen. This will of necessity depend on what organization can be established.

[Text]

Senator Fergusson: The minister mentioned social workers and also the possibility of employing women. However, I do not know in what capacity he meant. When I was in Australia I visited a penitentiary that had women social workers in the men's penitentiary. I was told it was a most satisfactory arrangement. Has the minister ever considered that?

[Translation]

Hon. Mr. Goyer: That is correct. As I mentioned, we already have women reclassification officers. Further, since we are now introducing the idea of the "living unit concept", I don't see why at that time women would not be able to, since it is not merely the job of guarding people, but rather of trying to help them re-socialize themselves; I do not see why, I repeat, women would not be able to do that work; these people often have problems deriving from their mothers, or they often have some resentment against women. The fact that they are attended by women may teach them how they should behave towards women. The same is true—women have been mentioned, ex-inmates have been mentioned—the same is true for Indians, for example. I don't see why we could not have a special accelerated program to attract more native Canadians of Indian extractions to our staff. The same thing applies to the Doukhobors. There have been local difficulties in British Columbia, where there is an institution which for a long time has accommodated Doukhobors only. I don't see why today we have a penitentiary system, in that area, which includes no people who believe, who are of that faith. It is a poor indication of what Canada stands for.

[Text]

Senator Hastings: I should like to ask a question of the minister pertaining to compulsory supervision. He said that we could not be satisfied with mere amendments and changes. In my opinion, this present change is likely to prove, and is proving, a very unsatisfactory one in the operation of the Parole Board. I submit that the Parole

Board must be a rehabilitative organization. By involving them in the field of compulsory supervision they will become a police force, wasting their time with men who have been refused parole. A man who has twice been refused parole is suddenly told that it is good for him. We are turning out a great many resentful men.

Would the minister consider delaying implementation of this program until the committee has had a chance to study the whole field of compulsory supervision? You delayed it once, sir. Could you not delay it another six months?

[Translation]

Hon. Mr. Goyer: My legal adviser tells me this is absolutely impossible, because the statute has been passed, and the law must necessarily be observed, must be enforced.

[Text]

Senator Hastings: Did you not delay it once?

Mr. Hollies: It was to come into force on proclamation, and that proclamation has been issued. I think the honourable senator would agree that once a law has been proclaimed in force, that is it. One would have to provide legislation to change the effective date. I am assured that once a proclamation is issued, there is no way to change the effective date. Indeed, there will be cases of mandatory supervision and they are arising now.

Senator Hastings: How many are failing?

Mr. Hollies: Senator, I am only the departmental counsel.

The Deputy Chairman: I gave an undertaking, after discussing the matter with a number of committee members, that we would conclude our hearing at 4 p.m. There will be opportunities later to question persons who are more directly concerned with these detailed matters. The minister has suggested to me that he would be pleased to return at any time satisfactory to us.

On behalf of the committee I would like to thank the minister and Mr. Hollies for their attendance, and for their very helpful presentation.

The committee adjourned.



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Deputy Chairman*

No. 12

THURSDAY, DECEMBER 16, 1971

FRIDAY, DECEMBER 17, 1971

Second Proceedings on the examination of the
parole system in Canada

(Witnesses and Appendices—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Deputy Chairman*

The Honourable Senators:

Argue	Haig
Belisle	Hastings
Buckwold*	Hayden
Burchill	Laird
Choquette	Lang
Connolly (<i>Ottawa West</i>)	Langlois
Cook	Macdonald (<i>Cape Breton</i>)
Croll	Martin (<i>Ex officio</i>)
Eudes	McGrand
Everett	Prowse
Fergusson	Quart
Flynn	Thompson
Goldenberg	Walker
Gouin	White
Grosart	Williams*
	Willis

*Appointed to the Committee on December 17, 1971

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 19, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laird, seconded by the Honourable Senator Cook:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier

Clerk of the Senate

Minutes of Proceedings

Thursday, December 16, 1971.
(18)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Prowse (*Deputy Chairman*), Fergusson, Goldenberg, Gouin, Hastings, Laird, Quart and Thompson. (8)

In attendance: Mr. Réal Jubinville, Executive Director; Mr. William Earl Bailey, Staff Member.

The Committee proceeded to the consideration of the following Motion by the Senate:

"That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada."

The following witnesses, representing the National Parole Board, were heard in explanation of the Motion:

Mr. T. George Street, Q.C., Chairman;
Mr. F. P. Miller, Executive Director;
Mr. W. F. Carabine, Chief of Case Preparation;
Lt. Col. Paul Hart, Director, Administrative Services.

On Motion of the Honourable Senator Hastings it was *Resolved* to print the Brief of the National Parole Board as an appendix to these proceedings. It is printed as Appendix "A".

On Motion of the Honourable Senator Fergusson it was *Resolved* to print the "Memorandum to All Parole Officers—August 11, 1970" as an appendix to these proceedings. It appears as Appendix "B".

At 12:00 Noon the Committee adjourned to the call of the Chairman.

Friday, December 17, 1971.
(19)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators: Prowse (*Deputy Chairman*), Buckwold, Fergusson, Goldenberg, Gouin, Hastings, Laird, Quart, Thompson and Williams—(10).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Réal Jubinville, Executive Director; Mr. William Earl Bailey, Staff Member.

The Committee proceeded to the consideration of the following Motion of the Senate:

"That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada."

The following witnesses, representing the National Parole Board, were heard in explanation of the Motion:

Mr. T. George Street, Chairman;
Mr. William F. Carabine, Chief of Case Preparation;
Mr. B. K. Stevenson, Member;
Mr. F. P. Miller, Executive Director;
Mr. J. H. Leroux, Assistant Executive Director, Parole Service Administration.

On Motion of the Honourable Senator Quart it was *Resolved* to print the document entitled "National Parole Board—Agency Contracts—Payment Record 1971" as an Appendix to this day's proceedings. It appears as Appendix "C".

At 12.10 the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, December 16, 1971

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Deputy Chairman*) in the Chair.

The Deputy Chairman: I call the meeting to order.

In the questioning yesterday I feel that at times, went beyond our terms of reference, but I allowed the questions because I felt the ensuing evidence provided valuable background information. It is not my intention at this stage to try to limit the areas of questioning, although we are dealing with the parole system.

If there are problems in the general correction field that can in any way be related to the parole system, I feel the committee should be allowed to question on such areas, so in the questioning this morning we will do that, we will follow the same procedure as yesterday's.

I have asked Senator Hastings to begin.

Senator Quart: You are invoking a type of closure on us too. Did I understand you to say we are not allowed to ask additional questions?

The Deputy Chairman: No, senator, what I said was that we did go beyond our terms of reference yesterday in our questioning, but that the questions that were asked, in my opinion, had indirect application to the parole system. What I am saying now, senator, is that it will not be my intention, as chairman of this committee, to try to restrict the areas of questioning as long as we are dealing with penitentiaries and the parole system.

Our witness today is Chairman of the National Parole Board and he is here with expert and special knowledge in that area.

Senator Quart: I apologize, Mr. Chairman. Closure is on my mind these days!

The Deputy Chairman: We will commence the questioning with Senator Hastings, and as he nears the end of a particular point I would ask any honourable senator who wishes to put a question to the witness to give me a signal. I will see that everyone has his day in court, so to speak, or an opportunity to ask questions.

I think it highly improbable that we will be able to finish this area today with Mr. Street. Mr. Street tells me he is prepared to be here tomorrow morning and, as we have to be here anyway, I feel we should finish this area tomorrow morning. I would rather do it that way than have too long a run in one session. Such a long run would be too heavy a burden on the reporting staff and, for technical reasons, our reports would of necessity be delayed.

We have had Mr. Street's report for three or four days, and we will take it for granted that it has been read.

Having divested myself of all those gems of wisdom, I suggest that Mr. Street now make a brief opening statement, after which Senator Hastings will start the questioning.

Senator Hastings: Will the brief be attached as an appendix to the Proceedings?

The Deputy Chairman: That is a good question. Probably this brief should be, and I would entertain a motion to that effect.

Senator Hastings: I so move. I do not know whether I can move that yesterday's brief be printed as well.

The Deputy Chairman: No, it was read.

Senator Hastings: Then I so move with respect to this brief.

Hon. Senators: Agreed.

Senator Quart: I understand that the estimates sent to the Standing Senate Committee on Internal Economy, Budgets and Administration, as was discussed yesterday, contemplated that all the briefs would not be published in our Proceedings, as with other committee.

The Deputy Chairman: I think that is generally correct. I do not know of any committee that has published all briefs.

Senator Quart: I think the Special Committee on Poverty did.

The Deputy Chairman: I do not want to set a precedent here by undertaking to publish all briefs, because I can tell you that in the estimate that we worked out with the Standing Senate Committee on Internal Economy, Budgets and Administration about two-thirds of our costs are now related to printing. If we need to have additional expenditures, I would sooner have them available for research rather than printing. At some stage of the proceedings there will be merely repetitious statements, but not at this basic stage. Certainly the Solicitor General's statement yesterday and Mr. Street's statement today should be part of the record, because Mr. Street will generally tell us, if I can anticipate him, what it is they think they are doing and how they think they are doing it. This is the basis of the inquiry. Perhaps we can leave it there and deal with the other problems as they arise. Is that agreed?

Hon. Senators: Agreed.

Senator Hastings: Mr. Chairman, you have accepted the motion?

The Deputy Chairman: I accepted the motion, and it is carried.

For text of brief see Appendix "A"...

The Deputy Chairman: I now call on Mr. Street, who is the Chairman of the National Parole Board and is a man who has had a lifetime of experience and interest in the problems we are dealing with today.

Mr. T. G. Street, Q.C., Chairman, National Parole Board: Thank you, Mr. Chairman and honourable senators.

[Translation]

To start I would like to say a few words in French. The objective of the National Parole Board is to select from the penitentiaries in Canada, the prisoners who clearly indicate that they have the intention to rehabilitate themselves and thereby help them by granting them a parole.

To prove to you that I am truly bilingual, I will continue in English.

[Text]

Honourable senators, as you have said, Mr. Chairman, we have submitted a brief that gives you an outline of how the parole system operates and that tells you something about our policy and procedure. Since you all have copies of this, I will not take the time to go over it again, but I would like to emphasize certain points, and then I would, of course, be pleased to answer any questions you may have or discuss in greater detail any particular features of the system.

The dual purpose of parole is the protection of society and the rehabilitation of inmates. It is a matter of helping those who want to help themselves. The protection of the public, of course, is paramount, and we do not grant parole unless we think there is at least a reasonable chance of success. When a person is granted parole he is put under supervision, and we are especially careful with inmates who are or maybe potentially dangerous.

There are about 7,000 inmates in our federal prisons and about 15,000 inmates in our provincial prisons. As you know, we have jurisdiction in both federal and provincial prisons. Since over 80 per cent of those people have been in prison before, it seems fairly apparent that the sentence of imprisonment for them was not particularly beneficial.

Most of the inmates in prison, however, are not dangerous or vicious or violent, and we believe that most of them could be kept under control in the community. Therefore, I suggest that there should be more treatment and control in the community, that the sentence of imprisonment should be used only as a last resort, and then only if no other form of treatment or control is available.

I think it is important to remember that almost all prisoners will come out of prison sooner or later anyway, whether we like it or not and whether they are rehabilitated or not. I therefore suggest it is surely more beneficial to have them come out under supervision, where they can be helped with their problems and can be controlled so that they cannot easily return to crime.

If the people whom we select for parole under our selective system need the guidance and counselling treatment, advice and surveillance that go with good parole supervi-

sion, the prisoners who do not get parole need that even more. It is because of this kind of reasoning that there will be a system of mandatory supervision, which will come into full effect some time next month, so that all prisoners coming out of federal prisons who have been sentenced since August, 1970 will be under a form of mandatory supervision for their remission time. While it will not be called parole but mandatory supervision, they will be subject to the same conditions and restrictions as parolees are.

Besides the fact that it is desirable that as many people as possible should come out of prison under supervision, they are under control not just for the extra time they would have spent in prison but for the remission time also, which is one-third of their sentence. This means that they are under control for a much longer period than they would be if they remained in prison, and I suggest that as a result the public is much better protected.

Since both probation and parole are about 75 per cent successful while they are in effect, I think they should be used more often. There should be more treatment and control in the community, and parole is one of the ways in which this can be accomplished.

Even at the best of times I am sure you can appreciate that operating a parole system is very difficult. Criminals are just naturally not a popular cause, and everyone has different views about them. The police, for instance, have a certain view of criminals and how they should be treated, and we try hard to work with the police and co-operate with them, and convince them that what we are doing is effective. The judges also have a certain point of view, and we keep in touch with them to explain to them our function. The public is also concerned; sometimes the public is inclined to be punitive, and we are at great pains to try to explain to the public that the only way they can be properly protected is by the rehabilitation of inmates coming out of prison, or at least having them under control. The prisoners themselves have a different view, as you can imagine, of how the parole system does or should operate.

Our job is to try to satisfy all these conflicting views in order to have the idea of parole accepted and to try to make the system work. Actually, in doing so we receive a great deal of criticism from all sources. We are criticized for paroling too many people, and we get just as much criticism from many sources for paroling too few. We are criticized sometimes for paroling people too early, and again just as much for paroling people too late in their sentences. It seems apparent almost that we are damned if we do and that we are damned if we don't.

As you can appreciate, this is not a popularity contest. We are quite accustomed to being criticized, because there does not seem to be any easy way in which we are going to make everybody happy. Naturally, there are a great many people with different points of view who think they can do our job better than we can. It is a matter of trying to do the best we can and keeping in touch with all the people I have mentioned, because we believe that what we are doing is effective, and we try to satisfy as many people as possible.

However, I assure you, honourable senators, that none of us in the parole system thinks that our system is perfect, or that there is any magic in our system, or that it cannot possibly be improved. We are constantly reviewing and

assessing our operation, trying new projects and new procedures to improve the effectiveness of the system. Despite, of course, our sincere belief in the efficacy of parole and our efforts to improve it, there is still bound to be some criticism, because, as I said, prisoners are not a popular cause, it is a very sensitive thing and we are dealing with people and not just with numbers.

In the first 153 months of our operation we granted parole to 38,444 inmates in the various federal and provincial prisons across the country. During that time, of those 38,444 inmates we have had to return to prison 5,250, of whom 3,180 committed indictable offences while on parole and had their paroles forfeited; 2,070 failed to abide by their parole conditions or may have committed a minor offence and had their paroles revoked. This means that, on the average, for the first 12 years and 11 months nearly 87 per cent of all those 38,000 persons granted parole completed their paroles without causing trouble or misbehaving.

This, honourable senators, is our record to date, and is one of which I think we may be justifiably proud. Despite our successes so far we are always anxious to find new and better ways to operate the system because, as you can appreciate, there is no exact science about it; it is a matter of using our best judgment and obtaining the most comprehensive information possible. We shall naturally await the outcome of your deliberations with a great deal of anticipation. We expect that your findings and recommendations will be helpful, and we hope that the result of your inquiry will mean a better understanding of the problems involved in the parole system and will provide us with some more support, which we surely need.

Senator Hastings: Thank you very much for your comprehensive brief and also for your opening statement. I might say that while I have been one of your critics I have also been one of your best supporters, and I hope you accept that in the spirit in which I am saying it.

Mr. Street: Certainly.

Senator Hastings: I am a great believer in parole, in you and the board, and in the job you have done.

Mr. Street: Thank you.

Senator Hastings: I believe that parole is the only instrument or tool that goes anywhere near filling the objective of rehabilitation, the bringing of the man into society. You are removing the man from the milieu or environment where rehabilitation is impossible or next to impossible. You bring him back into or closer to society, to the natural surroundings where rehabilitation becomes possible. Naturally, you are going to have failures, but we surely must be prepared to assume that risk in this day and age of enlightened treatment of individuals and fellow human beings.

I said your brief was very comprehensive and, if your budget will stand it, I suggest that you print about 7,000 copies for the inmates of Canadian penitentiaries and for every Canadian newspaper editor.

My first question is directed to your involvement with or consultation with provincial governments or cabinet ministers, and consultation with respect to parole. Do you

have consultations and discussions with or advice from provincial cabinet ministers or departments?

Mr. Street: We are in constant touch with all the provincial authorities across the country who deal in any way with prisons. One of the functions of our men in the field is to keep in touch with the attorney general's department or whichever department operates the prison system—it varies a little, as you know. When we are in touch with them, or when I visit an area, I never fail to pay my respects to the attorney general or the person in charge of prisons. So there is constant communication or liaison with them.

We also have contact with them in special cases, such as when the Dukhobor problem arose in British Columbia. As you can imagine, that was a very tense and serious situation, when something like 200 Dukhobors were locked up. We have had and continue to have meetings with the police, the attorney general people, and so on. As a result of all this we had police conferences and we started paroling them and it worked out very well.

We had the same thing with the province of Quebec when we were dealing with the F.L.Q. cases. Then we were dealing with special categories of cases. Otherwise we just keep in touch with them, because we are paroling people out of their prisons. Is that what you mean, or was there something else you had in mind?

Senator Hastings: I am asking specifically: Do you consult the Minister of Justice or a minister of the Quebec Cabinet with respect to a recommendation of granting or withholding parole?

Mr. Street: No, but we have an understanding, especially with Quebec and certain other provinces, and especially with police forces. If they have any special information about a criminal who may be in organized crime or who may be more dangerous than his record indicates, the provinces are invited to get in touch with us and then we get their information. But we do not consult them each time we want to parole someone. They are invited at any time to make representations to us, the same as anyone else. They know when people have got in prison and when they will be considered for parole; and, if they want to, they may get in touch and may make recommendations. We do not necessarily consult them in each case.

Senator Hastings: I am wrong in my suggestion, then, that you do consult the Justice Minister or the Solicitor-General in Quebec with respect to each case from the province of Quebec, and that he does in fact have a printed form which he supplies you with, giving "yes", or "no" or "maybe"?

Mr. Street: No, we do not consult them, but they are invited or encouraged to consult us, if they wish, and make representations in special cases. We cannot very well consult them about each case. What I am thinking about is the more dangerous cases, persons engaged in organized crime or something like that.

Senator Hastings: You do invite them then to make representations?

Mr. Street: Yes.

The Deputy Chairman: Is that in a general or in a specific way?

Mr. Street: In a general way.

Senator Thompson: If I may follow up that question, you are in a sense a quasi-judicial person, a judge with respect to the lives of people. You get letters from people such as myself, a senator, and a number of others?

Mr. Street: Yes.

Senator Thompson: I would think it quite improper for me to write to a judge concerning clemency, or otherwise, when a case is in court. I do not think it improper to write to you. Can you explain to me, since you must get a number of letters from politicians, do you feel like saying, "To hell with them"?

Mr. Street: I would say that there is nothing improper, senator, about getting a letter from a senator or a member of the House of Commons. When we are regarding a case or considering a man for parole, we seek and obtain reports and information from anyone we can. We do it ourselves. We get information in the community, in the prison, and so on. If someone knows him in the community, they are invited and encouraged to write us and say that they know this man, that they are willing to help him. If they are able to do it, there is no reason why a member of Parliament would not be able to do it. Most letters we get from members of Parliament—that is, from senators or from members of the House of Commons—are just asking for information. They do not really know the person. It is not very often that a senator will write and say he knows this person and his family and knows he can get a job here, or something like that. That does not happen very often. He is usually inquiring because a constituent, presumably one of the prisoner's family, has asked him for information. They do not know how to do it, so they ask us. I do not see anything improper about that. We want all the information we can get, and if the man's mother, someone in the community or a friend of the family wants to make representations, he or she is invited to do so. The only difference is that he or she may be doing it through his or her member of Parliament.

What we do object to is if the individual thinks, and sometimes this is apparent, unfortunately, that he can obtain parole by influence. There is nothing that can do a prospective parolee more harm than to try to obtain parole by influence. I am not suggesting that a member of the House of Commons, a senator or a minister would attempt to try to use influence—they do not—but these people do not seem to know it, and I would regard it as a negative factor if a person thinks that is the way parole is granted.

Senator Thompson: Have you ever had the Attorney General or the Minister of Justice write to you or speak to you and say, "I want those people not on parole"?

Mr. Street: Not on parole?

Senator Thompson: Or, "I want them to stay in jail for a longer period"—and that would be done?

Mr. Street: I do not recall getting letters . . .

Senator Thompson: Not a letter, but representations?

Mr. Street: . . . or a representation or communication of any kind like that. But since the Attorney General is in charge of the administration of justice in the province, we are concerned with whatever his opinion may be as to the dangerousness or otherwise of the inmate, so there would be nothing improper in making representations.

I do not recall getting a communication in the exact fashion you say, but it could happen that the police would write to us and say that a particular man was in organized crime and that they regarded him as a potentially very dangerous individual. They would tell us about his connections, and so on, and we would consider all that information along with any other information we had. So, if it is police information or information from the authorities, we are interested in having it.

Senator Thompson: I am thinking of political influence. What you are saying to me is that any political person can make his representations, but he is treated just as anyone else is and you are not influenced by the political situation.

Mr. Street: No. And it does not happen often. I cannot say that it never happens, but it does not happen often. Members do not try to influence the Board. They are usually just inquiring about the status of a particular case, and we write to them saying that the man, so-and-so, will be eligible at such-and-such a time and that we will leave their letter on file. By that I mean the letter that the member got from whoever wrote to him, presumably making representations that the inmate has a job or a place in the community to go to. It is a means of getting information about inmates through members of Parliament. As I say, the one thing that is not helpful is that even if the inmate thinks he can get it by influence this is a negative factor.

Senator Laird: Mr. Street, if I understood you correctly, when you were speaking to Senator Hastings a few minutes ago you said that the provincial authorities knew when a man was due for parole. How would they necessarily know, and do you think any formal steps should be taken to notify them?

Mr. Street: Well, if they are concerned with a particular case, they know he is in prison because it is their authorities who put him in there, the police and so on, so they know he has been put in prison. If they care to make representations, they are allowed to do so. We encourage them to, if they want to. Is that what you mean?

Senator Laird: No. Let us follow your procedure as set out in your brief. How would they know, for example, that at a certain stage a hearing was going to be held regarding the parole of a person who was applying for parole?

Mr. Street: If nothing else, they would know that every inmate would be considered for parole after he had completed one-third of his sentence.

Senator Laird: Right. But the onus there is on them to keep track of that situation. You do not do anything specific to alert them to that situation.

Mr. Street: Well, in the province of Quebec we do have an arrangement by which we notify them of any application for parole in respect of a person who is serving a sentence of five years or more. They asked us to do that, and so we

do in that case notify them. I had meant to mention that to Senator Hastings previously.

Senator Laird: That is what I was trying to get at. Thank you.

Mr. Street: We let them know in that case, but other than that it is left to them to get in touch with us.

Senator Goldenberg: Are you saying that that is confined to the province of Quebec, Mr. Street?

Mr. Street: It is now, senator, but anybody could do it. In respect of British Columbia, as I mentioned, we certainly had very special arrangements with British Columbia because of the Doukhobor situation. But I would say, so far as I know now, that Quebec is the only province where we notify them on long sentences.

Senator Hastings: So you do invite the Attorney General of Quebec, he is given the opportunity to oppose parole.

Mr. Street: He could oppose it. He could give us information or make a recommendation that he was not in favour of parole. In that case we would expect some information about it. We would expect to know why, and usually the reason why is that they suspect the inmate is in organized crime or something like that.

Senator Hastings: Well, during the October crisis last year the government of Quebec issued a public statement to the effect that the government would not oppose parole with respect to the 13 alleged political prisoners. They said they would not oppose parole. By inference, that means that they could oppose parole.

Mr. Street: I think the unfavourable impression created by that press release was not entirely fair. In those cases, as I indicated, we are at pains to seek them out and have conferences. This was a tense situation in which we were dealing with an abnormal class of persons. We were glad to have those conferences. But I think the cases to which that article referred concerned some people who were eligible for parole, and perhaps some of them would have been considered for parole if the whole thing had not flared up again.

Senator Hastings: Yesterday I tried to get an answer from the minister, but without success. Perhaps you can enlighten me. Why did the province of Quebec, with 30 per cent of the inmates, have only 11 per cent granted day paroles during 1970-71? Twenty-five per cent were granted parole. In other words, there seems to be an unfairness about this. I will not use the word "discrimination", but there seems to be an unfairness towards the inmate in the province of Quebec, and I am wondering if there is an inference to be drawn here.

Mr. Street: Day people depends on so many factors. For instance, it depends upon co-operation of the prison authorities themselves because they have to let the men out during the day.

Senator Hastings: I am dealing only with federal penitentiaries, sir, not provincial.

Mr. Street: Then it depends not only on the co-operation of the institutional people but on whether the man has a

job or a school to go to or some kind of training that he has accepted.

The Deputy Chairman: Senator Hastings, you gave us some percentage figures with respect to the province of Quebec. I think you said 11 per cent got day parole, and then you gave another figure of 25 per cent, but you did not tell us what that figure referred to.

Senator Hastings: Twenty-five per cent of the paroles granted were granted to Quebec inmates.

The Deputy Chairman: But you did not give us any comparative figure there, although I am quite sure it was in your mind. In order to complete the record, would you tell us why the 11 per cent and 25 per cent figures lead you to say that there seems to be some discrimination, or unfairness, as you put it?

Senator Hastings: Well, the Maritimes, with 9.6 per cent of the prison population, sir, were granted 11 per cent of the paroles. Ontario, with 28 per cent of the prison population, was granted 26 per cent of the paroles. The western provinces, with 32 per cent of the prison population, were granted 37 per cent of the paroles.

The Deputy Chairman: That is what I wanted. That completes the record. Thank you.

Senator Hastings: And then, along with this goes the temporary absence. In the province of Quebec, with 30 per cent of the prison population, they were granted only 2,000 temporary absences, which is 10 per cent of the temporary absences granted during 1971.

Mr. Street: It is certainly not a matter of discrimination. It must be because we did not get that many applications which could be favourably considered. A man is not allowed to go on day parole unless he has a job to go to or a school or training to go to. We do not give him day parole just to wander around. Inmates can get temporary absences for other reasons, and they do get them rather freely in some cases, but it is certainly not a matter of discrimination.

Senator Hastings: I should not have used the word "discrimination". Unfairness—let us put it that way.

Mr. Street: I do not know if I could produce statistics with respect to the inmates who applied for but did not get parole. However, I will try to get that information for you.

The information I have about day paroles granted this year is that in the province of Quebec in the first nine months of this year there were 158 out of a total of 1,000 across the country.

Senator Hastings: I am glad you brought up that figure, because the figures I have, granted by months, are 4, 9, 7, 7, 11, 9. Then in October it jumped to 22 in the province of Quebec. I thought that was a significant increase in that month.

Mr. Street: Well, this depends on so many things, such as whether a person has a job organized, and so on. One of our officers in Granby has done quite an extensive job recently in the field of day parole. He has been at some pains to arrange this for 30 inmates, if I recall correctly.

This has happened recently because he went out of his way to try to find jobs for them. Somebody has to do this. They either have to find jobs themselves or else somebody has to arrange it for them.

The Deputy Chairman: Mr. Street, I think I am in error in that I did not ask you to introduce your staff, and I think that rather than formally introducing them all now, I might say that on any one of these questions dealing with detail you are quite free to call on any member of your staff, and as you do that to each one you can introduce him and then he becomes a witness before the committee for that particular question.

Senator Hastings: I will not labour the point, Mr. Street but I thought that I might take credit for the increase, in the light of the memorandum I gave you and the Commissioner of Penitentiaries.

Senator Thompson: I want to follow up on this point, Mr. Street. We have been given, as one of the reasons why they are not on parole, the unemployment situation, but I would suggest that in the Maritimes they also have a tough unemployment situation and so I question the validity of that alone. Could you give us other reasons why Quebec seems to have a lower figure, and is there some research being done with respect to the fact that Quebec has a very low percentage of people coming out on day parole in comparison with other provinces?

Mr. Street: That is right; they had 149 in Nova Scotia and New Brunswick. I will see what Mr. Miller has to say about this and if he can add anything to what I have said. It depends, of course, on whether somebody gets these things organized. As I have said, just recently one of our officers in Granby went to some pains to do this. The same thing happened in Dorchester. Our officer down there, with help from other people, got things organized. It is not a matter of discriminating; it is a matter of organizing.

Senator Thompson: Are you suggesting that parole officers are more organized in other provinces than they are in the province of Quebec?

Mr. Street: I do not think that is the situation. I think it could happen, but in some places it is a little easier to do it. It is not so easy to do it, for instance, in Dorchester because it is a long way from town. It is also not as easy in Stoney Mountain, although we do it.

Mr. F. P. Miller, Executive Director, National Parole Board: I think the main thing Mr. Street has said is that the complex of factors is most important. When one does isolate a single factor such as employment as having a bearing on it, then the attention goes to that as the main cause, whereas it is not necessarily so. Your point as to whether one office is better than another raises an interesting possibility. Without making a comparison, it is possible that a total situation in a particular area can be much more conducive to having such a thing as day parole take place. I am confining my remarks at this point to day parole because that is where the interest is. In Winnipeg it has turned out—and I am not necessarily giving bouquets to Winnipeg as opposed to any place else—that there is a complex of factors that makes for a building up of day parole.

Senator Thompson: I am sorry for interrupting you, but here we would like to know what that complex of factors is. We know that one factor is the employment picture, but what are the others? Because if we know those things we will know how to better the situation regarding parole.

Mr. Miller: A total interest by the officials and by the community there, having people in the community who are willing to assist, the existence perhaps of residential facilities that might be of some consequence, all officials at all levels concerned at a particular time to bring about a result. If that implies a criticism of some other area that does not have all these things working together, it is not intended in that way. Over the years one finds a waxing and waning of interest in particular areas.

Senator Laird: What about the existence of a family, as opposed to the release of a single prisoner with no family—in other words, an unmarried prisoner? Does that enter into the picture?

Mr. Miller: Well, there could be circumstances favourable to both and there could be circumstances unfavourable to both, but with a family and a job possibility this might be a good thing, while on the other hand for a single person, a number of day paroles are for educational and training purposes. In these cases what matters is the man's capability to benefit from the program and the existence of the program.

Mr. Street: One of the factors that is very important, senator, is whether or not the local authorities co-operate. Senator Hastings was telling us in his case about federal prisons, but we have just had a letter from the attorney general of a province complaining that there are too many day paroles. He does not like seeing people on the street; he prefers to see them in his crummy prison. This is the kind of thing we have to contend with. Now we have gone to some trouble to promote this, especially in some of the provincial prisons which are not very good institutions in which to keep them and where they have no training and no program, and we think it is better to have them out working and doing productive work during the day and coming back at night, or at least on weekends. That is better than having them sit in these places, particularly if it is safe. However, that has not been an easy product to sell and in at least one province they do not like it.

Senator Goldenberg: Did they give reasons for not liking it?

Mr. Street: They thought it was being done too freely. They saw somebody sentencing a person and the next day saw that person on the street, and they just did not like it.

Senator Goldenberg: How many parolees do not come back as expected from day parole?

Mr. Street: I do not think we have had very many failures on day parole.

Senator Hastings: I think it is about 1 per cent with respect to temporary absence.

The Deputy Chairman: I understand there are two bases for day parole: some of them are organized by the prison system itself; and some are organized by yourselves. Am I correct in that assumption?

Mr. Street: Yes.

The Deputy Chairman: So you will have figures on the paroles arranged by the Parole Board. But do you have figures on the paroles arranged by the system in the penitentiaries themselves, where they handle their own?

Senator Hastings: I think it is 2,200.

The Deputy Chairman: This is a question that may be addressed here, and perhaps you would indicate to us the areas where you do not have information or which you feel you ought not to speak about, and then we can arrange to get that information later, without confusing the picture by having two situations in people's minds without a clear understanding that there are two situations.

Mr. Street: Thank you, Mr. Chairman, that is a very important point. In the first place, I do not think I could tell you who arranged for all these various paroles. As I have indicated, some times our officer did and some times the prison warden did. For instance, your friend at Drumheller has gone out of his way to arrange for quite a few paroles, and some others have done so also. The warden at Drumheller has taken quite an active interest in this program. The result is that Alberta has a very high number of parolees as compared to some of the other provinces. You might confuse this form of absence with a form known as temporary absence, which can be granted by a prison warden for up to 15 days. I think a three-day leave can be granted by the warden and 15 days by the commissioner. This is for compassionate purposes and reasons like that.

If it is for a period of 15 days it might be under a temporary absence. There are many temporary absences being granted, but we are not involved in that. When we began our day parole program, for reasons which I have already mentioned, and Senator Laird has been kind enough to say he agrees with, we spoke to provincial authorities about the program and, since then, some provinces have begun programs of their own. They have the authority to do this. Ontario, Saskatchewan in particular, and Alberta are a few of the provinces which have done this on their own by use of temporary absences. This is fine with us. It does not matter who does this as long as it gets done.

Senator Thompson: There is a question which has not been answered regarding the number of day parolees who have not returned.

Mr. Street: We have no exact figures. My associates will correct me if I have said something which is not correct, but I can safely say that very few have failed to come back when they were supposed to or return to the prison that evening.

Senator Quart: Mr. Street, you mentioned that a few of the day parolees failed to return. If they do not come back, what do you do about it?

Mr. Street: We revoke their parole and pick them up again.

Senator Quart: I am very new in this business, and I have not been in prison before.

The Deputy Chairman: No bragging, please!

Senator Quart: In the meantime, if an inmate applies for parole is he or she entitled to any legal counsel or to assistance in answering questions which are put to him or her by the National Parole Board, or is the inmate left on his or her own?

Mr. Street: He is entitled to consult a lawyer at any time and the lawyer can do anything he pleases, but he is not entitled to have a lawyer present at his parole hearing. We do not feel this is necessary, or that a lawyer can usefully add anything to the parole hearing. Whether a person is granted parole or not is not a legal matter; it is a matter of assessing the individual, as to whether we feel he can be safely released and live in the community under supervision. It is not a legal matter or a judicial decision; it is an administrative decision. We do not feel there is any useful purpose in allowing lawyers to attend parole hearings. They are encouraged and invited to write to us any time they desire and make representations on behalf of an inmate. As I have indicated to lawyers, one of the best ways they can help, if they desire to help, is to advise inmates to take advantage of whatever is going for them, to educate themselves and overcome any problems they might have, and help them by gaining community support. This is very important. A lawyer can help in that way. This is not a legal matter; it is a social matter. We do not allow lawyers to attend parole hearings.

Senator Thompson: There would seem to be a number of administrative responsibilities when a prisoner is granted leave on parole. Apparently, the prison itself can grant this leave so we cannot get accurate figures of those who are on day care parole since there are other means by which an inmate can be granted this leave. Do you feel that this should be better co-ordinated? Your parole officers know the resources in the community. I wonder if the prison personnel know the resources as well. Should there not be consultation with the parole officers? Would you like to see that better co-ordinated?

Mr. Street: Yes, I would. There has been, and there needs to be, more co-ordination. However, consultation is going on now to decide exactly where temporary absences end and day care paroles begin. I would say that temporary absences could be granted for compassionate reasons, or because a man has done particularly well and deserves a weekend at home with his family. This could be handled by the warden. If it is for less than 15 days, I feel it could be handled by the warden. If it is for the purpose of working or going to school, I feel we should be involved in that decision. It would then be a matter of weeks or months. This is roughly the division of responsibility. Since there has been more use of this temporary absence program recently, we intend to consult with those in charge of penitentiary services to decide exactly on the division of responsibility. As I have said, some of the provinces have already used these powers by establishing a work-release program or a day parole program. We do not mind that, so long as it is being done.

Senator Laird: I feel this is relevant, Mr. Street. I am looking at an article that appeared in the *Windsor Star* on November 15, 1971, taken from the *Washington Post* under

the by-line of Alfred Friendly. The headline reads, "British Plan Substitute for Jail". I have no intention of reading the entire article, but the first paragraph reads:

The British government proposed last week its first experiment in treatment of petty criminal offenders by sentencing them to community service work instead of jail.

Would that proposal appeal to you?

Mr. Street: Yes, it would very much. As I indicated in my opening remarks, I feel we should have more community service work programs and use the prison only as a last resort. I feel we need more probation, more community work programs, and as the British have, more detention homes because, as we have said, 65 per cent of those in prison are not dangerous. I am certainly in favour of things such as that.

Senator Thompson: How do you determine that 65 per cent are not dangerous? I realize that this is a human aspect, but you obtain reports from psychiatrists and others. How scientific is this?

Mr. Street: I meant that most of the 65 per cent commit property offences rather than offences against the person. They are not offences of violence. There is no violence in the record. It is break, entry and theft, simple theft, fraud, and offences such as possession of stolen goods. They comprise the majority of inmates, and I say they are not dangerous in the sense that they are not likely to offer violence or assault anyone.

Senator Thompson: I am really inquiring as to how you assess a person for parole. What factors do you consider? Does the psychiatrist's report carry more weight with you than the fact that he could gain employment?

Mr. Street: We consider many, many factors, as set out in our brief. If the man is dangerous, naturally we are more careful. If he has a mental illness or psychiatric problem, we consult a psychiatrist, although I think it is fair to say only 10 or 15 per cent have such problems and need psychiatric treatment. In such cases, we certainly consult a psychiatrist. Then, if it is a serious case we form a panel of three psychiatrists from outside, in addition to the prison psychiatrist, and obtain their opinion. If any psychiatrist told us a certain individual is dangerous, naturally we would not be likely to parole him.

Senator Thompson: I am sorry to interrupt, but do you have the assistance of such a panel of psychiatrists in every province?

Mr. Street: Yes, and we would certainly obtain it in every murder case or in the case of a dangerous sexual offender. We will not parole a man until we do have this report. We hire these extra psychiatrists ourselves, and we always have access to a psychiatrist in the prison system. Does that answer your question, senator?

Senator Thompson: It does to a degree, Mr. Street. I think, however, that it is a very important area in which to reassure the public. We are developing new psychological tools and so on, and it is my opinion that we have over-

emphasized the diagnostic abilities of some psychiatrists. One will act for the defence and one for the prosecution, and some of their reports, in my opinion, are very vague in order to guard themselves, and you are left to take the responsibility. They weasel out of it. I am not that fond of the "*psychiatric forte*", but if I were newly appointed to the Parole Board, could you give me help by indicating the characteristics and other important aspects in the assessment of a person's entitlement to parole? Do you do that?

Mr. Street: Yes, we do. When we have occasion to consult a panel of psychiatrists we have a list of questions to put to them. We try to pin them down as much as possible but, as you know, some of them do not pin down as easily as we would like. Naturally we have our own opinions of different psychiatrists as to who are good and who are not so good. We once had a certain amount of difficulty in obtaining unequivocal reports from certain psychiatrists. Now we know those upon whom we can depend. As you know, it is not an exact science, but we give them a list of questions and ask for answers.

Especially in potentially dangerous cases, murder and if there are psychiatric problems involved, we like to send them to a mental hospital for a month or two for observation. Then the panel of psychiatrists, which may be more than but is at least three, would have occasion to treat and observe the case for 30 or 60 days and provide a case conference report and a separate report from each psychiatrist, which we would then consider. In a case of an ordinary type of offender with a psychiatric problem which leaves us unsatisfied, in addition to the psychiatric report from the prison we would obtain three from outside.

Senator Goldenberg: Mr. Street, you have spoken of murder two or three times. Do you have different policies for different types of offences?

Mr. Street: In this sense we do. If it is murder, he has to serve seven or ten years, and then the case goes to Cabinet.

Senator Goldenberg: Excuse me, but that was not what I had in mind. I meant, in determining whether a man should go on parole, do you have one policy governing sex offenders, another for drug offences, and so on, or do you apply the same general principles?

Mr. Street: I would say we apply the same general principles in all cases, except with dangerous and sex offenders and especially dangerous sex offenders. We are more careful with such cases than we would be with the property type offender. We do not have any different stated policy with respect to different types of offences, except in a general way. If they are dangerous, we are much more careful; and if there are psychiatric problems we obtain psychiatric opinions. Then it is a case of judging each individual case according to the individual merits and circumstances and the information that we have as to what is going on in the community, the same as all the others.

The Deputy Chairman: May I suggest that it would be helpful at this point if the witness were asked—I would sooner not do it—what criteria are used in determining whether a person does or does not receive parole? Will a member of the committee volunteer to do that, please?

Senator Thompson: That is really what I was endeavouring to ask earlier, but I did not express it as well as you, Mr. Chairman. What are the criteria?

The Deputy Chairman: I have the advantage of being just a watcher.

Mr. Street: The criteria, are set out in page 6 of our brochure, "An Outline of Canada's Parole System for Judges, Magistrates and the Police". The paragraph states:

These are some of the factors that help the Board decide:

- (a) the nature and gravity of the offence, and whether he is a repeater;
- (b) past and present behaviour;
- (c) the personality of the inmate;

Of course, that involves a great deal, such as the presentence report at the time he was committed and any previous record. In addition to that, we would consider any psychological tests, such as IQ and MPI, which were taken in prison. We would have a general assessment of how he behaved in prison and another assessment from all who dealt with him inside and outside prison.

- (d) the possibility that on release the parolee would return to crime and the possible effect on society if he did so;
- (e) the efforts made by the inmate during his imprisonment to improve himself through education and vocational training and how well they demonstrate his desire to become a good citizen;
- (f) whether there is anyone in the community who can—and would—help the inmate on parole;
- (g) the inmate's plans and whether they are realistic enough to aid in his ultimate rehabilitation;
- (h) what employment the inmate has arranged, or may be able to arrange; steady employment must be maintained if at all possible as one of the most important factors in his rehabilitation;
- (i) how well the inmate understands his problem; whether he is aware of what got him into trouble initially and how he can overcome his defects, and, how well he understands his strengths and weaknesses.

That is a general outline of the criteria which we would be interested in knowing. We try to find this out, and we get most of the information from the people who deal directly with them. We have to hear from everybody who deals with him, what the classification officer says about him and his assessment of him, his workshop instructor, how he gets along in his work, whether his behaviour, attitude and conduct are satisfactory, what the psychologist or psychiatrist says about him, personality tests. These are all things that we obtain in almost every case.

Senator Thompson: The fellow who comes from a middle-class background has a better chance than a fellow who comes from a tough economic background.

Mr. Street: He may have more going for him on the outside: more people may be willing to help him; he may have a job arranged more easily. We find that 78 per cent

of those on parole in Canada are working. It would be fair to say that if a man has a lot going for him on the outside, a lot of family and community support, and a job, that might turn the borderline case into a parole. But if he does not have anything like that and is doing well in prison, we would somehow find something for him. Even if a man had nothing going for him within the community, we would do whatever we could, through our own officers and through community resources, to try to get something organized for him. It just makes it a little easier if he can do it himself.

I suppose that a person who comes from a middle- or upper-class background might have a better opportunity in the community. However, if a man has nothing going for him, we will do our best to assist him. We are looking for an indication of a change in attitude. We know what he was like before; we can tell by his previous record what he was like. In all these reports we are looking for an indication of a change of attitude.

It involves no exact science. It is a question of how everybody assesses him, what they think of him, and what he says himself. When the Board members examine him, they obtain a good deal of information. Sometimes they get information about him that perhaps they did not have before.

Senator Thompson: Let us take an extreme case. An inmate of Belsen who adapted and conceded to the horrible conditions would achieve recommendations to the effect that he may get out. You yourself would say that many persons, in order to get out, have to play ball and obtain a good report from the prison staff. If a man has a little bit of spunk he may end up in isolation, which means that he will not get out. In order to help your work, some prisons should be improved a great deal.

Mr. Street: Federal prisons are pretty good. I do not want to over-emphasize just good conduct in prison, because that by itself does not mean much. Some of the worst criminals are the best behaved in prison because they know how to do time and they do not go out of their way to cause trouble and make it difficult for themselves. As you indicated, a youngster who is inclined to be rebellious may not conform to the system too well; but the fact that he did not, may not mean that he cannot be controlled outside. Good conduct by itself is not really that important. It is a matter of assessing everything a man does and everything about him in prison, to try to determine whether he seems to have changed his attitude. There is no exact science about it; it is a matter of assessing people.

I do not know how to express it any better than that. We secure information from everybody who has been in contact with him from the time he first got into trouble until the present day.

Senator Goldenberg: I understand that an inmate may be paroled prior to his normal eligibility date. Is that right?

Mr. Street: Yes, sir.

Senator Goldenberg: What criteria do you use in a case like that? I will be frank. I have in mind the recent case of the kidnappers who were released on parole in Toronto.

Mr. Street: As I have indicated, the parole regulations provide that if there are special circumstances the board may make an exception to the regulations and parole a man ahead of one-third of his time. This is one of the good things about Canada's parole legislation, because we are able to be flexible. We are dealing with human beings, and it is a matter of trying to get them at their best time, at a time which would be best both for them and the public, having always in mind the protection of the public, rather than being concerned with arbitrary rules. We are dealing with people, not numbers. I do not believe in arbitrary rules, and fortunately Parliament did not when it passed the legislation, which provides for flexibility.

In the case which you mentioned, unfortunately there has been some reaction about that. While the offence of kidnapping is a very serious matter, I submit that it was not an ordinary case of kidnapping. I suggest it was more a stupid prank than anything else. I feel sure, and so do my colleagues, that those men will never commit that or any other offence again. It was the first time for them. Because of what I consider to be very special circumstances—as I say, I think it was more of a prank than anything else—we thought they should be paroled before their eligibility date. We are satisfied that they will not misbehave again.

Perhaps I should not make statements like this, but I am prepared to say that if it were an ordinary case of kidnapping, such as we read occurs in other countries, I do not think the Board would ever parole people who did anything as dangerous as that. But I do not think that victim was ever in any danger, and I am satisfied, for the reasons I have mentioned, that those were special circumstances. Unfortunately, the reaction was not all that favourable. We received some criticism over that.

Senator Hastings: How many times have you used your early parole discretion the past year?

Mr. Street: I do not think we can tell you for this year, but on the last occasion that I heard, less than 10 per cent of cases were released before eligibility date, and of that 10 per cent some were released only a month or two ahead of their time usually because they wanted to attend school. If we have a university student who is not eligible for parole until October, if we can get him out and back to school in September, we will do so. If he has a definite, steady job-offer, he might be released a month or two early, but his would be an exceptional case. In another well-known case we released a young woman four months ahead of time in order that she might attend university. Unfortunately, some of the public do not appreciate this sort of thing and think that we should extract our pound of flesh.

In answer to special circumstances, the Board gave some indication to its staff of what it considered to be special circumstances:

(6) "Special circumstances" can never be precisely defined in advance. Any evaluation of what single factor, or combination of factors, in a particular case at a particular point in time may constitute "special circumstances" is of course a matter of individual discretion and judgment.

(7) A general principle is that no deserving case shall be allowed to suffer through rigid adherence to arbitrary

time rules, where the best interests of the inmate and community would be served by his earlier release on parole. The case concerned should offer a unique justifiable ground which could not be contemplated by the Regulations. It is not, of course, the Board's duty to review the propriety of sentences.

We have set out some of the factors which we consider to be special circumstances. Some of them have to do with clemency or compassionate grounds, such as a death in the family or the birth of a baby or at Christmas time. Here I am referring to release 30 days ahead of time. They can be released to accommodate a deadline for school or seasonal employment; to preserve a particular job, especially if handicapped; inmate indispensable for certain specified duties; inmate a student prior to short sentence, and his return to school expedited; meritorious service to administration during an institutional riot; sentence being served in default of non-payment of fine when non-payment results from general financial hardship; time in custody prior to sentence; changes in the law following conviction; minimum mandatory sentences—and quite often what happens in those cases is that the judge writes us and informs us that he had to give him a certain period of incarceration but if he had had a choice he would not have done so, and so he asks us please to parole him. There are other such factors as, for example, administrative inequity—two equally culpable accomplices, different judges, different dates of sentence and different sentences for the same type of offence; accomplices released by exception for any reason but especially if relative to the present case; to provide identical eligibility dates for accomplices in light of information not available to the court; extenuating circumstances in the offence, and various other things. We set all these factors out in this memorandum. If you wish, I could leave a copy with you.

Does that answer your question, Senator?

Senator Goldenberg: I would like to have a copy of that.

Mr. Street: I have just given you a rough outline of some of the things. I do not think I should take any more time reading the rest of this, but I would be glad to give you whatever number of copies you require.

The Deputy Chairman: I wonder if we could have a motion to print this memorandum as an appendix to today's proceedings?

Senator Fergusson: I so move.

Hon. Senators: Agreed.

(For text of memorandum, see Appendix "B")

Senator Goldenberg: Mr. Street, one can understand the layman's criticisms when he reads the newspapers. The public reaction to the case I referred to was, "Here are five or six members of the community"—I forget how many there were—"who are fairly well off, middle-class people who kidnapped a girl as a so-called prank." My question is, Mr. Street, would you have applied the same test or would you have made the same decision if it were five or six unemployed persons who decided to play this prank?

Mr. Street: If we thought it was more of a prank than a real case of kidnapping, and if we were satisfied that they

would not do it again, which we were in this case, and if the reports which we got as to their conduct and progress in prison were favourable, yes, we would.

As I say, some people have more things going for them on the outside and that is a beneficial factor. If they do not have things going for them on the outside we have to get them going, but all people are certainly treated the same.

Senator Goldenberg: But they had more going for them on the outside.

Mr. Street: Yes. As I said, they all came from middle-class families, they all had jobs and a good many people helping them.

Senator Hastings: Quite apart from the reaction of the public, Mr. Street, I feel even more important is the reaction of the inmates who see this type of thing going on. The man whose wife is on welfare just does not have the resources, and so forth. You must consider the bitterness and the resentment which you create in the inmate population when they see these special circumstances or these special regulations being utilized.

The Deputy Chairman: That is hardly a question.

Senator Hastings: I am just making an observation.

Mr. Street: We are not unconscious of this. We have had experience with this before. There was criticism from one person who thought it was wrong, and this person was not only potentially dangerous but he had killed one person and maimed another, and now he is annoyed because we will not let him out. I do not think he will get out before eligibility because he is potential risk.

As I said, this is no popularity contest. It is hard to keep everyone happy. We are not oblivious to the views of the inmates because we have to keep some peace in the family, but, as I say, you are criticized for too much and you are criticized for too little.

One of the first times we tried day parole we got a terrible reaction from the inmate population. We allowed one young man to attend university, which was right next to the prison, and we were criticized for that.

Senator Hastings: You cannot win!

Senator Laird: As I understand it, Mr. Street, as a class, murderers are the best risk for parole. Is that so?

Mr. Street: The ones we do parole are, yes.

Senator Laird: How do you account for that?

Mr. Street: Well, in the first place, we only parole the good ones; we do not parole anyone who is potentially dangerous.

When the Board came into operation 12 years and 9 long, tough months ago, the people we were dealing with at that time, and for a certain length of time thereafter, were convicted murderers who had not been hanged. The dangerous, vicious, deliberate, violent type of murderers were hanged, so we did not have to contend with them. However, since we do not hang murderers any more we do have to contend with the more dangerous type, and as a result of this we are more careful in our selection process.

If we do not recommend parole, the Cabinet never hears about them, but if we do recommend parole, then, the Cabinet has to approve their release. It is somewhat more difficult now because we are dealing with the more dangerous type of murderer.

Senator Laird: Perhaps I am wrong in my understanding, but I believe I read somewhere that murderers, as a class, are the best parole risk.

Mr. Street: The ones we parole are, yes.

Senator Laird: The ones you parole are the best risk as a class?

Mr. Street: Yes, senator.

Senator Fergusson: I would like to say to Mr. Street that I certainly think that the document which he has presented to us will be most valuable to us in our study of the parole system, and we will depend on it for information. In my opinion, it should have a great deal more publicity. If people who now criticize the National Parole Board were aware of all the facts which are brought forth in this brief, there would be much less criticism. I am thinking particularly of those who are interested in the economic aspect. If they could read page 14 of this brief, where the figures are presented of how much more expensive it is to keep people in jail and how much we lose economically by doing so, I believe they would be favourably influenced.

Mr. Street, your percentage of 87 per cent success in your 12 years and 9 hard months you spoke of is really quite astonishing, and it seems strange to me that in view of that there is so little publicity given by the media to the 87 per cent success rate and so much publicity given to the few cases or the much smaller percentage of cases that are unsuccessful. I hope that the work of our committee will bring these things to the attention of the public. Those are my comments, Mr. Street.

There are two or three other matters I would like to ask you about. I would like to know about the panels of the Board that now travel throughout Canada. Do you find this more successful; and how did you come to decide to send panels from the Board out to investigate the cases?

Mr. Street: May I first comment on your very kind remarks, senator? The brief you referred to in your comments was prepared by Mr. J. H. Leroux, Assistant Executive Director, Mr. W. F. Carabine, Chief of Case Preparation, Mr. G. Genest, Chief of Parole Supervision, and other members of the staff.

As for the failure rate, I do not wish to mislead you. Out of 38,000, or whatever number I said, only 5,000 or 13 per cent went back; that is over a period of 12 years. Lately, because we have literally trebled the number of paroles, that failure rate is going up. That is an average over 12 years. Last year, for example, we paroled 65 per cent at a failure rate of 25 per cent. I hesitate to make comparisons, but the United States Federal Board of Parole had a failure rate just as high as ours. They only paroled 45 per cent. Anyone can say no; I think the test of a good parole system is how many you have on parole and how many you refuse. I am beginning to wonder whether we parole too many. We still think this is a good way to do it, because they are going to come out anyway and we still have our

failure rate within reasonable limits. We watch this carefully every week. Any member of my staff will tell you that I watch the statistics all the time. In any event, I still say that it is within very reasonable limits.

To answer your question about panels, we started this because we think it is more satisfactory for the members actually to see and talk to the person to whom they are considering granting parole. I am not suggesting that they necessarily in all cases or in most cases are able to make a more intelligent decision than they would from reading the carefully prepared assessment or reports in the file. But it is beneficial to talk to the inmate.

Senator Fergusson: Someone interviewed them before?

Mr. Street: Yes, they are always interviewed.

Senator Fergusson: Someone from your office?

Mr. Street: Yes. The case is still prepared in the same way. He is interviewed by all concerned, especially the regional officers in the field, under the direction of Mr. Carabine, and they give us their assessments, the same as they did when we dealt with the files here. The only thing that is added is that now the Parole Board can see them and they are able to ask questions and bring out things that they like to and form their own assessment—although I think they could make a decision on the file, too.

It seems to me the most important feature of it is that the inmate has an opportunity to make his pitch, as it were, to those who are actually going to decide. It is much more gratifying and satisfying for him to appear and state his own case and have his day in court, as it were.

As far as the decision is concerned, I do not think it matters too much, if you are going to give him a parole, whether you give it to him in that manner or hand it to him on a platter by two members of the board, or send it through the mail. The most important thing of all, apart from the gratifying aspect of seeing the inmate and the inmate seeing us, is that if he does not get a parole he is told why and he knows exactly why. He does not have to guess or speculate any more, and they are able to give him some guidance and advice about it. Besides this, it keeps our members, in their travelling, not only in touch with the prisoners, which is important, but with all the federal institutions. It is onerous for them, but they try to keep in touch with the institutions and the institution heads, and they are able to discuss and meet classification officers, psychologists, psychiatrists, wardens and so on, and the result of it has been very gratifying, although it is very strenuous and they have to travel much of the time.

Senator Fergusson: And you feel it was a very worthwhile decision?

Mr. Street: Yes, I do, senator, and it has been very favourably received by, as I say, almost everyone, and I do not know of any unfavourable comment. Everyone likes it—the prisoners and the institutions.

Senator Fergusson: The prisoners certainly would prefer to talk to someone from the Board, than talk to the staff.

Mr. Street: Yes, and it is less impersonal.

Senator Quart: This is a supplementary question, before the subject changes. Prior to the interviews with the travelling panel that you now have, it was a responsibility of the regional parole officer, was it not, to interview the inmates regarding parole?

Mr. Street: Yes. It still is.

Senator Quart: Does that officer still do it?

Mr. Street: Yes, he still does it in the same way, and, in fact, he is at the panel hearing with them, to give them detailed information.

Senator Quart: I did not realize it was the regional officer.

Mr. Street: The only change is that the Board interviews and makes the decision on the spot.

Senator Quart: Yes.

Mr. Street: The regional officer still interviews them throughout the whole report. Incidentally, as you know, the Ouimet Committee recommended this use of panels, but we started it before their report was in.

Senator Quart: I might just add that having travelled, as Senator Fergusson knows, across Canada to hearings held by the Committee on Poverty and by the Committee on the Constitution, the travelling across the country is not so pleasurable as the public think.

Mr. Street: No, it is not.

Senator Quart: You have not time to change your mind before you have to do it in another place, sometimes.

The Deputy Chairman: I am not sure, senator, that that is completely relevant, but we will accept it, anyway.

Senator Quart: I know, but I always go outside the lines.

Senator Fergusson: This is a question I particularly want to ask. On the amount of remuneration you give to agencies and provinces, when you changed from giving them an annual grant to paying them by the case, was this decision made on the basis that you could not afford to pay them as much? For instance, I know of one agency, the Elizabeth Fry Society, which does work for you. They do not have very many cases but they do good work, and I think they now get \$30 per person; and they have to give about six hours a month for each one of those parolees. They find they are much worse off than they were when they got an annual grant. I wonder if you discussed this with the agencies that work for you, before you changed the method.

Mr. Street: Yes, we did.

Senator Fergusson: You did? And did they prefer that?

Mr. Street: Yes.

Senator Fergusson: I can see how a large association works, where they have a whole lot of cases.

Mr. Street: It certainly was discussed. In fact, Mr. Miller and two other members from the department travelled all across the country and discussed it in some detail with all the agencies involved. It is unfortunate if there is an

agency which is not doing as well as it did under the grant system.

Senator Fergusson: They are certainly not getting as much money as they did under the grant system.

Mr. Street: Unfortunately, I suppose that is so in the business of supervising women, when we do not have any women on parole. I did not realize until you told me. For all the others it is a very beneficial system.

Senator Fergusson: Do you not have any women on parole now?

Mr. Street: Yes, but we do not have as many. There are only 100 women in federal prisons.

Senator Fergusson: I know.

Senator Quart: It cuts down the investigation.

Mr. Street: If we paroled them all, there would be only about 100.

Senator Fergusson: It is not so much the investigation; it is the work with them. It is not an investigation. The investigation is over by the time they are sent to them on parole.

The Deputy Chairman: Is it the after-care, perhaps?

Senator Fergusson: Yes.

The Deputy Chairman: I think this is another factor that we will have to deal with.

Senator Fergusson: It is certainly one that I would like to see dealt with.

Mr. Street: Unfortunately, this agency is not doing as well now. Agencies are now being paid \$800,000. I think, according to the figures for last year. I am not sure if that is for last year or for the first nine months of this year, without checking. It is one or the other.

The Deputy Chairman: You might check it and give it to us, so as to keep the record straight.

Mr. Street: Mr. Paul Hart, do you have the answer to that question?

Lt. Col. Paul Hart, Director, Administrative Services, National Parole Board: The \$800,000 is the estimate of what we will be paying in this fiscal year.

Mr. Street: Do you know what we paid last year?

Mr. Hart: Something around \$700,000, I believe.

The Deputy Chairman: Thank you.

Senator Thompson: When you pay them that amount, Mr. Street, there has always been an apprehension on the part of some voluntary agencies that the man who pays the shot calls the tune. The voluntary agencies may feel this. I think we should give them credit. They have been critical in the past of the lack of reform and have been pushing for reform. Do you see, in paying the agencies, a danger that you might drown out that spirit of reform?

Let me include another question and take another area in particular. Assuming that there was a situation with one of these agencies, where you felt really that the case workers or after-care workers were really not quite competent but these people had community sanction and punch, could you go to them and say, "You must have certain standards with respect to your after-care workers, and if you do not have those standards you do not get a grant"? Are there standards that you set up and require before they get a grant?

Mr. Street: That is one of the problems, senator. It is not easy. Even though it is a contract and provides for certain control, and so on, it is not just feasible to insist on and enforce the kind of high standards which we would like to have. But we had, for example, to give 50 per cent of our cases to them anyway. It is not that easy. Some of the agencies, through no fault of their own, are not able to have the same high standards that some of the others do, because they are not as big or do not have as much money, and so on. This is a problem.

Senator Thompson: What are the guidelines set down by the department before you give money to them? What are the standards required, or are there any standards required?

Mr. Miller: The agencies that are given supervision and that are asked to do community investigations are agencies that have been working with us for a period of time. In the last year, since we introduced this contract, there have been two or three new agencies that have been introduced, and we go through a preliminary period of our local office assessing the particular kind of service they can give. If we feel the service is likely to be adequate, then we move to a contract. In negotiations at the local level we do endeavour to improve the standards of performance. If the performance is not up to standard, our district representative meets with the head of the agency on a particular case and points out where, in our opinion, the work was inadequate.

Senator Thompson: Have you ever said to an agency such as the Elizabeth Fry or the John Howard Society that the individual agency was not up to the standard in the particular area and that, therefore, you would not give them a grant?

Mr. Miller: Well, we are now on a fee-for-service basis, and so on a particular case it may very well be that we would say we would handle that case ourselves. Usually in such a situation as that the agency itself would agree that we were the ones who should be handling the particular case. It may vary from area to area on just how that decision is made.

Senator Thompson: But you have no code of standards. There is nothing set out with respect to this public money which goes to the agencies.

Mr. Miller: Yes. The contract sets out certain requirements.

Senator Thompson: What are those requirements?

Mr. Miller: The requirements are that they will make an investigation, and appended to the contract is an outline of

what we require in our community assessment. A copy of such a contract could be given to each of you, I am sure.

Senator Thompson: I am more interested in the qualifications of the person making the investigation. What are the standards you set for that?

Mr. Miller: No, I am sorry. I now understand you. We do not insist that they have any particular qualifications.

Senator Thompson: Why?

Mr. Miller: Because across the board, in the general view that we have, from anywhere in the community can arise a way of helping in this field. A particular kind of agency may not have what we would call a professional type of employee, but it can be very supportive and we would be giving them the cases in which they could be supportive.

Senator Thompson: Do you have qualifications for your parole officers before you hire them?

Mr. Miller: Indeed, we do.

Senator Thompson: Then, since 50 per cent of the people are going to be with the after-care agencies, why do you not require qualifications for their staff?

Mr. Miller: Our qualifications are set for us under the Public Service Commission Standards and in negotiation. The essence of this co-operation with the community is to be sufficiently flexible to allow for different kinds of things.

Senator Thompson: I am concerned about the qualifications of people who are handling the ex-offender. We all want to get community support, but I am talking about where public money is given to the personnel of these agencies, and you have no qualifications that you demand of the after-care agencies.

Mr. Miller: That is right. We do not have those qualifications.

Senator Quart: Mr. Chairman, I know very little about this aspect of the subject, but, since there are different standards in different agencies as regards case workers or after care and so on, would it not be better to have employees in the department who would be more qualified to deal with these cases and not deal with any agencies at all? Or is there some advantage in having outside agencies that for other reasons I know nothing about? Perhaps there are contacts or something of that kind.

Mr. Street: Well, that is a rather delicate question.

Senator Quart: Do not feel you have to answer it.

Mr. Street: We have been told to give 50 per cent to the agencies. The agencies vary from very good to not very good. For the reasons mentioned, it is not feasible to insist on as high standards as we would insist on in our own service. Most of our men have masters' degrees in social sciences. At any rate, we have been told to give 50 per cent, and we have to deal with it the best way we can. If it is a very difficult case we can supervise it ourselves, but we do have to give 50 per cent to people outside.

Senator Fergusson: Mr. Chairman, is this not a matter of policy? We can hardly require an answer from Mr. Street on questions of policy. If the minister were here we could put questions to him on this, but I do not see why we should ask Mr. Street these questions.

The Deputy Chairman: It was a rather detailed question which perhaps involved policy, but Mr. Street is giving us the reasons that they do this. Perhaps there are one or two questions which would make the matter clearer. For example, am I correct in assuming, Mr. Street, that the reason you use these private agencies and do not insist too much on high professional standards is that, particularly in smaller communities, you are better off with something than with nothing? Is it not also true that the astronomical cost of supplying staff in places that would not require staff could not be justified?

Mr. Street: Those are good points, senator. Certainly, there are small towns where there would be no use in having either a parole office or a parole officer. There would not be sufficient numbers of cases to justify that. In those places you need somebody else's help. Usually, however, the after-care agencies for the most part have their offices in the centres in which we have ours. They have them in the larger centres. They do not always cover the small towns either, presumably for the same reasons that we do not, although I should say that in some places they do have what they call a volunteer supervisor, who is a person with no particular qualifications but who is interested in the work and does it for them.

Even if we were allowed to, we could never put parole officers in all of the different places, but where we do not have offices we do try to get someone else, such as a provincial probation officer. That would answer that, because in a little town like Wetaskiwin, in Alberta, there are not enough paroles to justify an office, but we have to do the best we can.

Senator Thompson: Mr. Street, I think I speak for all here when I say that we have a high admiration for the way you have tackled this very tough job.

Mr. Street: Thank you.

Senator Thompson: What do you think has been the greatest asset for you in assuming this position so far as your background is concerned? Was it your experience as a magistrate, for example? What do you think has helped you the most?

Mr. Street: In my personal background?

Senator Thompson: Yes.

Mr. Street: I always had these views about imprisonment when I was a magistrate, and I used to use probation even before we had a probation officer. I always felt strongly about more control in the community and giving discipline that the individual did not get before, and things like that. What I have found useful in this particular job is the fact that I was a magistrate for 11 years and was stuck with the job of deciding and sentencing, and the more I knew of this business the more I realized how difficult that is. It makes it easier for me to go and talk particularly to the chief justices in Canada and the judges of the courts of

appeal, judges, magistrates and provincial judges because they know that I was one myself and have legal training which they have. I think it would be more difficult for a social worker, if he were Chairman, to go and talk to a chief justice of a court of appeal and all these other judges about sentencing, because it is a delicate matter. It is their responsibility, and yet we are working with them. I think it is easier for me, and that is the most important thing about it. The Fauteux Committee recommended it should be a judge, a supreme court judge, but somebody realized that magistrates have more experience with crime than they have. I suppose that is how I was stuck with the job.

Senator Thompson: Do you think that a background as a magistrate should be a qualification for one member of the panel or for all members of the parole panel?

Mr. Street: No, not all.

Senator Thompson: Just one then?

Mr. Street: Just one, I think. I would not object if there were two, but I think we should represent different disciplines, which we do. At one time, out of five of us, four were lawyers, which I think was not particularly desirable in the sense of not having enough of the other disciplines represented. Now we do represent other disciplines: we have social workers, criminologists and an ex-chief of police. We are well represented now. There is also room on the Parole Board for a member of the public who does not have any particular training or experience but who could represent the public point of view, and we do have such a member.

The Deputy Chairman: Perhaps with good common sense and public sympathy.

Mr. Street: That is right. That is perhaps the best qualification for any job, sir. Does that answer your question, Senator Thompson?

Senator Thompson: Yes, it does, but in a sense I have been unfair to you. May I say that if some of these questions we ask refer to matters of policy, as Senator Fergusson has suggested, in no way do I want to put any one on the spot. If you just tell me that you cannot answer the question, then I shall understand.

What happens in the appointment of members of the Parole Board? I suppose it is a political selection?

Mr. Street: No, not in that sense. They are, of course, all appointed by the Government, but of the ones we have on the Board, three were members of our staff who were regional representatives before, and they are not in any sense political, certainly not in the sense that they had anything to do with politics. In some cases I was fortunate enough to have made a recommendation and the Minister agreed with it and, certainly, these were not what you could call political appointments.

Senator Thompson: But you can make recommendations for people to be appointed to the Board?

Mr. Street: Well, I always did, yes.

The Deputy Chairman: I am not about to let this go, the point where anybody is going to knock politicians.

Mr. Street: We have a couple of ex-members of Parliament on the Board and they are both very good members. I am delighted to have them both. One of them represents what I call the public, and the other was a magistrate, but both are very fine members and I am delighted with both of them. I should be glad to get a couple of dozen more.

Senator Thompson: There is some suggestion in regard to the appointment of judges that apart from the Minister of Justice making an appointment, there are recommendations made by the law societies.

The Deputy Chairman: You are getting right to the edge of irrelevancy here.

Senator Thompson: Well, there are professional associations in connection with parole. Now I do not know if you can answer this, but do they make recommendations with respect to appointments?

Mr. Street: Yes, I guess they do, but I have been fortunate in that I have made certain recommendations and most of them have been accepted, and I have no cause for complaint.

Senator Thompson: Does the Canadian Corrections Association recommend people who they think should be appointed to the Board?

Mr. Street: Not that I know of, no. I suppose that if they had any ideas they would come and speak to me or to the Minister. I do not know if they ever did speak to the Minister.

Senator Quart: You have two former members of Parliament that you mentioned. One we know, but who is the other?

Mr. Street: One was an M.L.A.

An hon. Senator: A member of the Alberta Legislature.

Senator Quart: Oh, just Alberta!

Senator Hastings: I should like to return to Senator Fergusson's views on the hearings. We got sidetracked. Leading up to the hearings, Mr. Street, as you outlined the procedure as followed, there is one thing that disturbs me and disturbs most of your clients. That is that, as you state, you get a police report and a report from a judge. You said a short while ago that the most important criterion was some indication of a change of attitude on the part of the applicant. In other words, had he faced his problem and was he doing something about it? I just cannot understand what contribution a judge or the police could make in arriving at resolving that problem when they had seen the man perhaps two, three or seven years ago.

Mr. Street: Well, that is a good question, senator. For the sake of co-operating with judges we have always invited them to write us and give us information, if they wish. Some of them like to do this, but not very many, and we invite them to do it if they wish. Quite often a judge will say that he recommends an early parole because he felt he had to give this sentence as a public deterrent or because it was a minimum sentence, but he recommends early parole. Then if he wishes he can give us his assessment of the man as he found him at the time of trial. Some of them

give us details of the offence, the background, and so on. When we get reports, generally speaking they are helpful, but when we first started, we started asking judges for reports, and we even had a form to make it easier for them. Even then, many of them did not fill in the form, and even if that was all they did it was not all that helpful. The form was designed to give a maximum of information with a minimum of inconvenience. But since so few of them did this, we changed the policy some years ago and we just sent them a letter saying that we would be glad to hear from them if they wished, and so they will feel that we are trying to work with them in trying to fulfil the purpose they had in mind in giving the sentence they did. Quite often their reports are very helpful, but we do not get very many reports from judges.

Senator Hastings: But when your officer goes out to carry out his community investigation, why does he go to the police?

Mr. Street: We want to know about the circumstances of the offence and we want to know whatever information the police have about the man's background, if any.

Senator Hastings: But you have that on file at the start of his incarceration.

Mr. Street: That is what I am talking about.

Senator Hastings: I am speaking of the community investigation before he goes up for his hearing. Why go to the police at that stage when all they have are bad memories of the man three, four or five years ago?

Mr. Street: That is not a regular thing. Perhaps it has happened in some cases, but it is not part of the regular community investigation report. In some cases it may have been done because it was thought that the police might have useful information about the man. I do not know why they did it, but it is not the usual thing to consult the police when making a community investigation report.

Senator Hastings: I wish you would convey that information to your officers in the field.

Mr. Street: Do you have any comments on that, Mr. Carabine?

Mr. W. F. Carabine, Chief of Case Preparation, National Parole Board: I believe it is stated in the brief, sir, that the main emphasis regarding community assessment is on the family and the close relationship of the family, but there may be collateral interviews with the police. It can be extremely useful to have interviews with the police regarding an individual returning to a community. They are an integral part of the community. The police could very well have information regarding the community situation to which the inmate is to return. This is particularly useful in smaller areas.

Senator Hastings: I disagree with you, but, nevertheless, you say this is a minor matter.

I am reading from the *Kingston Whig-Standard* of November 13, 1971, where one of your officers said:

It might require four months to prepare a case to present to the board as it entails gathering information

from the police, judges and other bodies, as well as checking home or community conditions.

He turns it around by starting with the police, the judge and other bodies. I feel that it is probably issues such as this that contribute a great deal to the misunderstanding on the part of inmates.

Mr. Street: Is he not talking about the general preparation of a case? We get police reports on all of these cases.

Senator Hastings: That is at the beginning.

Mr. Street: Yes, but it is not part of the community investigation report.

Senator Hastings: He says that it might require four months to prepare a case to present to the Board, as it entails gathering information from the police, judges and other bodies. If there is anything that will disturb an inmate it is to tell him that you are gathering information from the police.

Mr. Street: It is true that they do not like it, but we have to work with the police and we need to know what the police know about the man and the circumstances of his offence. We get that information; that is part of the work we do before we decide to grant parole. It is not part of the community investigation report to decide where an inmate is going to go in the community. We have police reports on almost every case.

Senator Hastings: He has said it is part of the community report to decide where a person goes.

Mr. Carabine: I feel that what Mr. Phelps (District Representative National Parole Board, Kingston) was referring to unquestionably was the normal four-months period we feel it takes to prepare a case. His comment regarding the police report was unquestionably in that context; it was not in the context which we are discussing now. As I have said, some of our staff, particularly in the smaller areas, contact the police as part of their investigation to gain an understanding of the community as it exists now, or perhaps, nine months or two years later.

Senator Hastings: Is the city of Calgary a small community?

Mr. Carabine: Perhaps by your definition, sir.

Senator Thompson: It is, in comparison with Toronto.

Senator Goldenberg: I do not feel that the quotation from the *Kingston Whig-Standard* necessarily says that. If an officer looks at a police record in preparing a case, that does not necessarily mean he would go to the police and ask for it. As I understood Mr. Street, that record is available and you have it as part of the Board's files.

Mr. Street: Yes, we can obtain the record from the records department of the RCMP. We get a report from the local police as to the circumstances of the offence.

Senator Goldenberg: When do you get that report?

Mr. Street: We get it right at the beginning.

Senator Goldenberg: That is what I mean.

Mr. Street: As both Mr. Carabine and I have said, in certain instances an officer making an investigation may have thought it appropriate to talk to the police because of certain information he thought they had, but it is not usual to consult the police in the case of a community investigation report.

Senator Hastings: It is not?

Mr. Street: It is not usual, only in preparing the case in the first place so we are aware of with whom we are dealing.

Senator Hastings: I am sure you do not want to mislead the committee. You have indicated that when a man receives his decision, and the reason for the decisions it is done right here. Many decisions are received by mail with no reasons, are they not?

Mr. Street: In dealing with provincial prisons we have to do it by mail. We are not able to visit all the provincial prisons. If we have a reserved decision it is probably conveyed by mail.

Senator Hastings: And there are no reasons given along with the decision?

Mr. Street: I do not suppose the notification would state the reason. If he wants to know the reason he is entitled to speak to one of the officers in the field who dealt with his case and that officer will give him the reason. He would be able to interpret the reason from the file.

Senator Hastings: I feel this is one of the great complaints. I know the Board is doing a good job; but it seems to me that at the particular instant he is denied parole he is under great emotional strain and is not listening to anything else. I feel the Board is perhaps telling him the reason but it does not get through to him.

Mr. Street: I am afraid that is right.

Senator Hastings: He does not hear anything after he is denied.

Mr. Street: The same thing is true when he hears the word "parole". He forgets everything you tell him after that.

The Deputy Chairman: It is after twelve o'clock and I imagine there are other areas we will want to deal with. You gentlemen will be available tomorrow?

Mr. Street: Yes, sir.

The Deputy Chairman: I will accept a motion to adjourn now until either 9.30 or 10 o'clock tomorrow morning, whichever is more convenient.

Senator Laird: I would move 10 o'clock.

The Deputy Chairman: Is that agreed?

Hon. Senators: Agreed.

The Deputy Chairman: Thank you for your assistance today gentlemen. We now stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned.

Ottawa, Friday, December 17, 1971.

Senator J. Harper Prowse (Deputy Chairman) in the Chair.

The Deputy Chairman: Honourable senators, when we adjourned yesterday Mr. Street, the Chairman of the National Parole Board, was our witness, so I suggest that we continue from there. I notice there are one or two senators present who have not been here before. For their benefit may I say that the procedure we intend to follow is to use a lead questioner to get things started, and then at any moment any senator who has a question relevant to the subject being discussed may indicate that to me and I will recognize him or her. When we change the subject we will go through the same procedure again.

Senator Hastings, would you lead off, please?

Senator Hastings: Mr. Street, I wonder if with you and your staff we might follow the progress of one individual through the system until the Parole Board hearing, being on parole, perhaps parole violation and then back in prison.

Mr. Street: Certainly.

Senator Hastings: Let us start right at the beginning. I understand you have now commenced in the province of Alberta—maybe it is extended and, if so, I would like to know—coming into the picture right after conviction in court, interviewing the man and allocating him to a suitable institution to serve his sentence.

Mr. Street: The way that started was that we were asked to have our people in Edmonton screen men convicted in Alberta to decide whether they should go to Drumheller, which is a medium institution, rather than being taken over to Prince Albert, which means a trip there, having them screened there and then sent back to Drumheller. Our people are, in effect, screening these men ahead of time, so it saves the cost and trouble of taking inmates from Edmonton and Calgary over to Prince Albert to be screened and then taken back to Drumheller. This has worked out so well that the penitentiary people have asked us to do this in Winnipeg, the Maritimes and Saskatchewan.

Senator Hastings: So the better inmate, or younger inmate, according to record, personality and characteristics, avoids the traumatic experience of Prince Albert, or a maximum institution.

Mr. Street: Yes. It means he does not have to go there at all, because he is screened immediately after conviction before being sent to any federal prison; he is sent to the one that he will end up in anyway, rather than being taken to a maximum institution, like Prince Albert, and then being brought back. This is just another example of how we work with the penitentiary people. They were so pleased with how it worked that they have asked us to do it in these other provinces.

Before going on with Senator Hastings other questions, there are two points I would like to clear up, to make sure the record is straight. Yesterday there was some talk—I am not sure whether I said it or not—of how we sometimes get bad publicity for things we have not done. We make

enough mistakes of our own, and I can hardly complain about being criticized when one of our parolees commits an offence. But sometimes, unfortunately, a person who is out of prison, other than on parole, commits an offence and the newspapers blame us for it. There was one bad case when a policeman was killed in Montreal and someone was held hostage. That man was not released by the National Parole Board and was not on any form of parole. There was another case of a man who killed three employees of a large company, and the newspapers indicated that he was, in some manner, a rehabilitated convict; I do not know whether they said he was on parole or not. That man was not on parole either and, in fact, the only time we had experience with him was about six years ago and he was refused parole. Unfortunately, we get blamed for those. While I do not mind being blamed for our own mistakes, I do not like being blamed for mistakes which we did not make.

The Deputy Chairman: May I ask one clarifying question? He was not paroled but he was released. Does this mean that he had completed his sentence?

Mr. Street: The one who killed three people?

Senator Hastings: Allegedly killed three people.

Mr. Street: As far as I know, he had not been in prison for a long time. I think it was five or six years ago when we denied him parole.

Senator Goldenberg: The story in the Montreal papers said that he was a parolee.

Mr. Street: I know. That is why I am complaining of it.

Senator Gouin: Then he was not on parole. The paper said he was on parole. Had he finished his conviction or was he an escapee? You mentioned two cases. I refer to the first one.

Mr. Street: The first one was released on some form of temporary absence release in order to get treatment, and it was while he was getting treatment that this happened. He was not on parole.

The Deputy Chairman: That temporary absence is something that is provided in the Penitentiary Act and not in your act.

Mr. Street: That is right.

There is another common mistake in that sometimes a man is released from prison because he gets time off for good behaviour. He gets about one-third off and is released, therefore, one-third sooner than he would if he stayed full term. Sometimes, if he commits an offence, they say that he is on parole. He is not on parole; he is released because of time off for good behaviour. Unfortunately, these mistakes occur from time to time.

Senator Thompson: It does show, Mr. Street, that there can be a duplication. There are people who are out of prison, getting their sentences finished without having gone through the scrutiny of your organization.

Mr. Street: Yes, senator. One of those cases was so.

Senator Thompson: Do you feel that this is poor? Could we tighten this up in some way, and, if so, how?

Mr. Street: No, sir, I am not suggesting anything like that. I think the idea of temporary absence, to allow a deserving inmate to go home for a weekend or to go for some compassionate reason or even to aid in his rehabilitation done by the institutions, is a good system. I am not complaining of it. Yesterday we were discussing the fact that we should get together and decide when we should do it and when they should do it, and there is a rough division of duties. I suggest, if it is a short term of three days or five days, it would be suitable for temporary absence, but if it is for more than 15 days then probably it should be done by the day parole method. We only give a day parole to allow a man to go to work or to school. We would not be allowing a man to go home for a weekend; that is not our job, but that is the proper thing to be done by them, that is what they do, and I think it is a good thing.

Senator Thompson: But in these two cases surely we need to assure the public. I appreciate that we are focussing on two which created a rather exciting situation. This is an important situation. How can the public be reassured that there is some type of scrutiny before a man is set free?

Senator Hastings: You cannot do anything about a man until he has completed his sentence.

Senator Thompson: I am not talking about a man who has not completed his sentence and apparently goes out. You are suggesting it was not under your jurisdiction? Whose jurisdiction is it under? Do they have the proper facilities?

Mr. Street: Yes, I think so. They know very well, the prisoners they are releasing, and they are able to decide whether it is a reasonable risk or whether he is liable to escape or is dangerous. This is a very unfortunate and extreme case of a type which is not likely to occur again.

Senator Thompson: Could I bore in on this a little? If they know the person and they can assess him, what is the need for your organization?

Mr. Street: Generally speaking, our job is to decide whether he should be released on parole. The idea is to have an independent parole authority outside the prison administration. This is the theory of it, but in that case to let a man go home for a weekend is not a very weighty decision, or to let a man go out to take treatment, that is not a weighty decision either, and they should be able to decide that themselves.

I have no complaint about that. I think that is a good system. We could hardly deal with all these little requests. We deal with about 15,000 cases a year as it is, without getting these little things. Before this power was given to them we had a great deal of difficulty, because the only way it could happen was under the royal prerogative of mercy. We had to screen them. We would suddenly get a request from somebody that his father or his mother or his wife had died, so that he could go home for the funeral. He might be a man who could be trusted, most times without guard but, if necessary, we could send a guard. We had actually to get that through the Solicitor General, to the Governor in Council, to get permission. So this power was

given to them to do that. It is much more efficient and much more expedient to do this way.

At one time a man phoned me in a hurry because he got 14 days in jail for being drunk—it nearly makes me cry to tell you about this one—and his little boy hanged himself because his daddy was in jail for two weeks. So we were not going to keep that man in jail when he had got three days more to go, and we were not going to keep that man in jail when his little boy was being buried. This has to be done quickly, though. With this system now, the warden can let him go.

Senator Laird: In regard to one answer, you mentioned the case of a person who, when he was out for treatment, shot a policeman. Was he a mental case and was it mental treatment that he was out for? Do you know?

Mr. Street: I think it was. I do not know.

The Deputy Chairman: Let us watch it. We are going to have the penitentiary people in later. I do not want to cut down questioning at this time because we are just getting started on as broad a basis as possible, but there are some questions that really it is unfair to ask Mr. Street, who is the head of one service, when the question and the answer really ought to be dealt with by another service. If we establish that practice, Mr. Street may be able to say that in some of these cases the answer ought to come from the head of the other service, and that will take care of the situation.

Mr. Street: I was not trying to blame anyone, because I think it is a good system; but there is some misunderstanding about these things, and that was only one of three different types of situation which can occur.

The Deputy Chairman: I do not want to interfere with that explanation.

Mr. Street: There was also some talk yesterday, Mr. Chairman and honourable senators, about payments to after-care agencies. I am not sure that that was fully cleared up. There was a question in regard to the time when the agencies were under the grant system and just got the grants. Senator Fergusson raised that question. In the last year they were under that system they got \$165,000 from us.

Senator Fergusson: I am sorry, I did not hear you. Who got it?

Mr. Street: All the after-care agencies. It was \$165,000. In 1965 that amount was just \$96,000, so there has been an increase between 1965 and 1969. Then last year they received from us, in the way of payment for services, \$700,000. This year we expect that they will be paid about \$800,000, so they are much better off now than they were before, when they were under the grant system.

Senator Fergusson: That is, all agencies. That does not seem to work for a small agency.

Mr. Street: Yes, I did not realize that, and I am glad you have mentioned it. Other than that, they are, generally speaking, getting about three times as much as they did before.

Senator Fergusson: Certainly the agency that I know of is getting less than it got before.

Senator Thompson: Might I ask if you are happy with that situation, of 50 per cent of the parolees being handled by after-care agencies rather than by your organization?

Senator Quart: Yesterday I asked that question.

Mr. Street: As I said, I do not know whether I should comment on it any further. We do not have any choice in the matter.

Senator Thompson: I can comment on it, and I think that if we are setting up a professional parole system . . .

The Deputy Chairman: Senator Thompson, the purpose of the inquiry here is to have us ask questions. I have allowed a lot of comments from senators at this stage of the proceedings; but, properly, you are supposed to be questioning witnesses and not putting your own opinions on the record. With all respect, I make that suggestion.

Senator Thompson: I will put my own opinions later.

The Deputy Chairman: There will be full opportunity. Could we come back to Senator Hastings?

Senator Hastings: If we come back to the man, you have screened him as to the institution. He arrives. We will say his term is three years. He arrives at the institution, and I think your file is open. Could we continue from there?

Mr. Street: I will ask Mr. Carabine, who is in charge of this operation, to explain the various steps to you. Mr. Carabine is our chief of case preparation. He is a psychologist who, before he came with us about ten years ago, was the classification and treatment officer in Kingston penitentiary.

Mr. W. F. Carabine, Chief of Case Preparation, National Parole Board: Mr. Street has already spoken of the situation where we have our staff in the Alberta area do what could be called the pre-selection for the other institutions. He also indicated that this would broaden out. This, of course, is a relatively new approach. Normally, other than that type of activity, the first contact with the parole service staff would be at the time of the inmate briefing with respect to parole. This is done as part of the penitentiary intake orientation program.

As institutions differ in their intake, the timing of these briefings would vary in Montreal and Kingston. Kingston, of course, is approximately 100 a month, so you could not wait a month. But, at any rate, at given times all the inmates admitted in a specific period of time are brought together and they are briefed as to the meaning of parole. The time rules are explained, the conditions of parole are explained, and much of the time is consumed in overcoming the inmates' misconceptions about parole. Some of this is institutional folklore or inmate folklore and often there is a need to overcome the statements of those who have actually failed on parole. Normally, of course, people do not blame themselves for their failures. Neither do inmates, and, hence, this is something you have to overcome. You also have to overcome the idea that the inmate needs a job in order to get out. That is more or less but not entirely true. You have to overcome the idea that the

inmate needs to be married to get out, or needs to have influence or money to get out of the penitentiary, and so on.

These briefings last for an hour to an hour and a half, and the inmates are generally encouraged to think about and work toward parole.

Actually, except for isolated areas, there is no further contact by the parole service officer with the inmate body in general until such time as the individual applies for parole. Basically, the two jobs of the parole service officer are, firstly, the preparation of material and of reports and so on for presentation to the Board and, secondly, the parole supervision.

Senator Hastings: Can we just go back to the beginning again, to where the inmate has arrived and you open your file?

Mr. Carabine: Oh, I see; you want me to go through this step by step.

Senator Hastings: Yes. What does your file contain at this stage? He has arrived at the penitentiary.

Mr. Carabine: Other than in Alberta at this moment, and expanded, the only thing that the file contains at this stage is the admission form from the penitentiary, which is just a basic document giving the inmate's sentence, age and information of that kind. Then the first report to arrive after that is, generally, the R.C.M. Police fingerprint section record, which is sent to us automatically in all penitentiary cases. That is an up-dated record. Following this, police reports are received. Certain large forces and, in fact, certain small forces send us reports automatically in cases of inmates sentenced to penitentiary. With respect to those which are not sent automatically we will request them from the force involved. So the file gradually builds up. I should say here that the file in the field and the file at headquarters are identical.

Senator Hastings: Am I correct that the first contact the inmate receives is a letter from Mr. Street advising him of his parole eligibility and when to apply?

Mr. Carabine: That is correct. The letter is sent to the inmate, with copies to the field staff, warden and so on, advising the individual. In the case you mentioned involving a three-year sentence, it would normally be at one year. He is advised to apply five months in advance of that date.

Senator Hastings: Would you explain to the committee the difference between earned remission and statutory remission on a three-year sentence?

Mr. Carabine: In effect, the statutory remission is granted upon admission. It is one-quarter of the sentence. Beyond that the earned remission consists of three days per month and must be earned. The net effect of that, as Mr. Street indicated earlier, is that approximately one-third of the sentence is remitted if the inmate earns and keeps all his earned remission.

The Deputy Chairman: Senator Hastings, there is an urgent request for a supplementary question from Senator Thompson.

Senator Thompson: Thank you, Mr. Chairman.

Mr. Carabine, referring to the file that you have initially and the sources from which you obtain information for that file, you omitted mention of the pre-sentence report or probation officer's report. Does the predisposition or the pre-sentence report form part of your file?

Mr. Carabine: Yes. Pre-sentence reports are received automatically from the various provincial probation services and are available both to us and to the penitentiary.

Senator Thompson: Do you get the pre-sentence report automatically or is it only available?

Mr. Carabine: We get it automatically, yes.

Senator Thompson: Is that report mandatory? In other words, in respect of pre-sentence reports made by probation officers, is it mandatory for these to be made before an inmate goes to the penitentiary?

Mr. Carabine: No, sir. That is at the discretion of the court.

The Deputy Chairman: Senator Thompson, I really do not think you ought to be asking the witness questions on that area, because that would depend entirely on the rules in each province, surely.

Mr. Street: If Senator Thompson means by the word "mandatory" that we get the pre-sentence report, the answer is: Yes, we get it, if there is one. However, we have no control over whether there is or is not a pre-sentence report made in the first instance. In some provinces there is not a pre-sentence report in all cases.

Senator Thompson: Surely, if we are going to assess a man in terms of rehabilitation it is vital to have the pre-sentence report? I am sorry if I appear always to be putting Mr. Street on the spot.

Mr. Street: I am used to it, senator.

Senator Thompson: In my opinion, the pre-sentence report is a useful document. Do you agree that it is useful?

Mr. Street: Yes, I most certainly do, senator. I regret to say that, even though it is done in all cases in some of the provinces, it is not done in all cases in all of the provinces. In fact, in the case of some provinces one could almost say that a judge is not supposed to sentence without a pre-sentence report, but, unfortunately, we do not get it in all cases.

As I indicated, if one has been made, we certainly get it. Incidentally, Mr. Carabine will be telling you in a few minutes about another method of obtaining information he has devised by which, in effect, we will have a post-sentence report and we will be able to start working on that.

Senator Thompson: I take it, then, that you would be happy if we recommended that pre-sentence reports be mandatory in all penitentiary cases and that copies of all such mandatory pre-sentence reports be automatically supplied to you? Would you be happy with that?

Mr. Street: Oh, certainly, sir; it is very desirable. I do not know if that is within the constitutional terms of reference because it is a provincial matter, but I would be delighted if you could do it.

The Deputy Chairman: Honourable senators, I wonder if we could follow this procedure? Would you make notes of the areas that you want to question the witnesses on? Because in this particular area I want Senator Hastings to lead the questioning so as to give us, first of all, a complete picture of what happens to the man from the time he is placed in custody until he is released on parole, and from then until total and final release. This is what the witness we have this morning is here for. I know that as a result of that there will be questions. So could you make notes, in order to get a sequence that everybody can follow? Then we can come back to any questions you have, and you can ask for any detail you wish.

Senator Hastings: Now we have the man arriving for a three-year term, and his first date is his parole eligibility date, which is one year hence. Then the other date would be his release date, three years hence less nine months statutory remission and his earned remission of three days per month. Now he proceeds through the first year towards his parole eligibility date. What reports do you receive from the Penitentiary Service during that period?

Mr. Carabine: Immediately upon admission the inmate is interviewed generally by a classification officer and in addition psychological tests and IQ tests are carried out. The report we get from the institution, since August, 1970, forms part of what we call a cumulative summary. This is a four-part document with four different time sequences. At any rate, the classification officer's report is done, and it is essentially a social history. If there is no pre-sentence report, it is in large measure what the inmate tells the officer about his family, his background, his criminal career and his work experience. In general, it is a social history. This is made available to us generally in the first 30 days of the individual's sentence.

In some institutions there are follow-up reports and in others there are not depending on the staffing and a number of other factors. The individual can be seen at any time in the institution by the classification officer or by the psychologist, and so on, during his sentence, and notes are taken of this sort of thing; but we do as a matter of routine receive additional reports along the way.

The inmate then applies five months in advance of his eligibility date. This again calls for action on the part of the classification staff who again interview the inmate.

Senator Hastings: This is the classification staff of the penitentiary?

Mr. Carabine: Yes, of the penitentiary. They will again interview the inmate. In addition to his comments and his reports about what the man intends to do, the classification officer's report will include the sort of things he has done in the institution, what he has learned, if his attitude has changed, if he has taken a trade, if he has been out on passes; and it will include comments from senior officials who know the individual, the padres, for instance, the immediate work supervisor, the officer in a particular cell

block, if he is there, and so on. This attempts to give us a picture of the inmate as he progresses in the institution.

Senator Hastings: When he made that application, it triggered action by two elements: it triggered the classification staff; and it triggered your responsibility, did it not?

Mr. Carabine: Yes, immediately following or closely following on receiving reports from the institution.

Senator Hastings: His application form?

Mr. Carabine: Well, the application is simply acknowledged.

Senator Hastings: He makes application to his classification officer, who prepares a report as you have indicated?

Mr. Carabine: Yes.

Senator Hastings: And then it comes to you?

Mr. Carabine: No, we get a copy of it at the same time. This, as I say, triggers action on the part of the penitentiary classification office. Shortly thereafter this will trigger an interview by a parole service officer in the institutional area. This report will concentrate on the inmate's post-release plans, and the purpose of the interview by the Parole Board's representative is to give the Board the perspective or the picture from our point of view.

This is then followed by what we term a community assessment. The community assessment focuses mainly on the immediate family and close relatives. In some situations, of course, there is very little, really, because the inmate may not have any close relatives; he may be going to a halfway house or he may have plans to go to commercial accommodation. In any event, the normal situation is that the family, the wife or mother or father, as the situation may be, are interviewed. If the inmate so wishes, former employers could be interviewed. A great many factors are checked out, including what the attitude of the family is towards the individual. Sometimes it is very friendly and warm, but other times it is rather cool towards his return, and so on. In this situation our officers attempt to judge just how the community will react to his return, what are the supporting factors and what are the negative factors. Then once it is completed, it is sent back. If it is a different office that has done this community assessment—in Kingston, for example, it is most likely Toronto as the area where the majority return—that is returned to the parole service officer who did the interview. Meanwhile, of course, all this information is coming to headquarters and is available to the Board for study prior to their going out for a panel hearing.

Senator Hastings: I just want to clarify one point. You mentioned five months, but I think you should point out that it is nine months for murder. A man has made application five months prior in normal circumstances, and nine months prior where it is a case of murder.

Mr. Carabine: In life sentences, yes.

Senator Hastings: We have the opening file, we have the classification reports from the Penitentiary Service along with psychiatric and psychological reports. We now have

his application on file and we have an up-to-date report on the penitentiary service, and we have the outside or community report and now he is all ready for the hearing.

Mr. Carabine: At that point, yes.

Senator Hastings: Can we stop there? The only contact he has had has been with the parole service on his arrival, and then there was the briefing and now he has one more interview at the end.

Mr. Carabine: That is correct.

Senator Hastings: So, between the beginning and the end he has had no contact with the parole service.

Mr. Carabine: Not in the usual fashion, no.

Senator Laird: You have mentioned he was examined as to whether or not he had a trade. Let us suppose he does have a trade. What steps, if any, are taken either to have him continue in his trade or to learn a new trade?

Mr. Carabine: There again, we are talking about penitentiaries. As I have spent a little time with Penitentiaries, I suppose I can answer this. There are various institutions that are specifically designed for training inmates, for example, Collins Bay in Kingston, the Federal Training Centre in Montreal, and so on. Other institutions are geared more toward industrial production rather than training. However, good working habits are, in many respects, as important as a trade in the sense of employment. The classification team, classification board, or treatment team—they use a variety of names—interview the inmate and this interview concentrates on the inmate's interests. He will appear before a board of senior officials within the institution and they discuss with him what he wishes to do and how feasible it would be for him to do this.

Senator Thompson: Mr. Chairman, will you advise me regarding trades within the penitentiary which prepare a man for a job? Would you say that the equipment within the trades are up to date in comparison with the outside world?

The Deputy Chairman: I cannot allow that question, Senator Thompson, you know better than that.

Senator Thompson: I think it is a very pertinent question directed toward rehabilitation.

The Deputy Chairman: Let me make this point clear. We are not dealing with the entire question of correction. Our mandate is to deal with parole. I appreciate the fact that in order to understand parole we need to look at corrections, and I will allow some leeway here. However, to ask a member of the parole services whether facilities which are available within the prison services are adequate is a question he obviously cannot be expected to answer. That is the observation I make, at any rate.

Senator Buckwold: As I listen to the speakers, the classification staff within the penitentiary becomes a vital part of the whole program. In your opinion, how efficient and qualified are the classification staff members?

The Deputy Chairman: No, Senator Buckwold, I will not change my opinion. I intend to give complete leeway here.

But as a general rule, our witnesses are members of the parole services, and it is unfair to ask them these questions because they have to refuse to answer them. How can they possibly answer that question? At some later date we might very well have witnesses who could. I imagine such a meeting would have to be held in camera.

Senator Quart: Mr. Chairman, it might give them food for thought.

The Deputy Chairman: The question gives them food for thought. However, I am sure they have already thought about it.

Senator Fergusson: Will you permit us to ask these questions of other witnesses . . .

Senator Hastings: . . . such as the Commissioner of Penitentiaries?

The Deputy Chairman: Right now, it is obvious that the next witness we will likely have will be the Commissioner of Penitentiaries. He has not been warned about this, but your questions have made this quite obvious. However, I cannot allow this witness to be put in the position you are putting him.

Senator Buckwold: May I ask another question?

The Deputy Chairman: You can try.

Senator Buckwold: In the final judgment, how important is the report of the classification staff?

The Deputy Chairman: That is a good question and it is acceptable.

Mr. Street: Senator, I think it is fair to say that all reports which we get within the institution are very important indeed, because if any change in an inmate is going to take place it will take place there. We are looking for changes in attitude. It is the duty of the classification officer to interview the inmate and assess and classify him. As Mr. Carabine mentioned, all these reports are very significant. Our officers interview the inmate and also interview other members of the staff, apart from any written reports they receive, to check on any deficiencies or other available information. We are dependent upon them to inform us how an inmate is getting along.

Senator Buckwold: Are there many occasions on which the parole officer, when he is making his final judgment, will disregard the general implications of the classification staff report?

Mr. Street: He is not allowed to do that. We receive these reports also. The members of the Board, or it might be the entire Board, review these reports. Our officers receive supplementary reports, but they also receive these reports. We will see them, whether he agrees with them or not.

Mr. Carabine: He might disagree with the reports.

Senator Gouin: The witness has referred to pre-sentence reports and has indicated that some provinces were not sending in these reports. Is that what has been said? I was not sure whether all of the provinces . . .

Mr. Carabine: Senator Gouin, I believe it was the Chairman who was speaking; and he referred to the pre-sent-

ence reports and indicated that the number of pre-sentence reports that were made at the court level was not equal among the provinces. They are made available to us later.

Senator Gouin: What about Quebec? Do you have any idea of the number...

Mr. Carabine: There is a probation service in Quebec which is growing and we do receive reports from them.

Senator Gouin: Regarding the behaviour of the inmate, what form does the report take outside of dealing with trade, and so on? They may be misbehaving, and I would like to know what points are covered concerning his character?

The Deputy Chairman: Are you referring to the pre-sentence report or the classification officer's report?

Senator Gouin: The classification officer's report.

Mr. Carabine: As I have said, it deals not only with the physical aspects of an inmate's behaviour, in an endeavour to ascertain the essential attitudes of the individual. It is relatively easy to depict the extremes of an inmate, and the so-called wheels within the institution or the inner sanctum. They might very well go along with the rules within the institution while they are inciting others not to follow the rules. His working habits are not good compared with other individuals. Some inmates attempt to learn and understand their own personality. It is that general personality structure of an individual we are concerned with and how that alters, if it does alter.

Senator Gouin: Is there always a psychiatric report in the file?

Mr. Carabine: No, sir, there is not. The majority of inmates would not normally come under the purview of a psychiatrist. Psychiatrists are obviously available. We do have psychiatric reports when they are required.

The Deputy Chairman: When they are required by whom, by yourselves, or if they happen to be in the file, or both?

Mr. Carabine: In both instances. Inmates themselves will ask to see a psychiatrist. An inmate's behaviour, or the crime he has committed may be such that he would be seen by a psychiatrist. These reports are available to us whether they are done as part of the institutional treatment of an inmate or if they are later requested by us.

Senator Quart: Senator Gouin, being from the province of Quebec, stole some of my music! Mr. Street mentioned the decision of the entire Board. With over 30 penitentiaries scattered across the country housing approximately 7,000 inmates involving the travelling parole panel, is it possible to hold many Board meetings of the full membership for policy decisions with respect to important specific cases?

Mr. Street: Yes, senator. As a matter of practice and habit those members who are in town meet every Thursday. This has been the case, except yesterday. Every two months one week is set aside in which all nine members are here for a meeting.

In order to overcome the problem of members being absent from the Thursday meetings our secretary attends

to take notes. Minutes of the proceedings are available to absent members on their return.

Senator Quart: Do any particular cases call for the decision of the full Board?

Mr. Street: Yes. All murder cases naturally have to be considered by the full Board. Should the Board recommend parole, those cases must be prepared and submitted to Cabinet. If it is a case of an habitual criminal or a dangerous sexual offender, the application is heard by a majority of the Board. Certain other types of offences, such as armed robbery, would not be dealt with by only two members but by a majority of the Board, or five members.

Senator Hastings: Is it fair to say that any crime of violence requires the whole Board?

Mr. Street: That is roughly it, yes. The cases I mentioned have to be heard by the full Board. No two members could grant parole to a person convicted of armed robbery, for instance. Should the two-man panel consider a case to be important enough or one which might become a cause célèbre, they would not grant the parole on the spot, but would refer it to headquarters for consideration by the remainder of the Board.

Senator Quart: I have been led to believe that the Parole Act specifies that a Board decision is not subject to appeal. Can decisions of the Board be appealed? You mentioned that you submit them to the Cabinet.

Mr. Street: That applies only to murder cases.

Senator Quart: Why is it so for murder?

Senator Hastings: Because it is the Queen's prerogative.

The Deputy Chairman: Because the law so provides.

Senator Quart: I know, but—Well, I must not question the law.

The Deputy Chairman: You are a little off the subject in this line of inquiry.

Mr. Street: I personally would welcome a channel of appeal from decisions of the Board. I am very conscious of the awesome powers we have over the liberty of individuals in deciding the question of their release. However, I cannot think of any manner in which we could establish such a system. The courts are very busy now, and I do not believe they would desire to become involved in questions of release. Since we are conscious of this awesome responsibility, we have means within the Board by which cases to which some doubt attaches can be reviewed by the full Board, although the application may have been refused by two members.

The Deputy Chairman: Honourable senators, allow me to make a statement. We are attempting at the moment to arrive at a general picture of what happens from the time a man enters prison until his release completely from all restraints. Many questions will undoubtedly arise which can be asked at another time. May I again suggest that you make notes and keep them? We will provide other opportunities for discussing these questions, but we are losing continuity.

Senator Williams, may I first of all welcome you to the committee. Do you have a question?

Senator Williams: My question is broad, and may not qualify. I would like to know the percentage of those who apply for parole from the Métis and Indian population of the penal institutions?

Mr. Street: The percentage of the native population who apply?

Senator Williams: That is right.

The Deputy Chairman: That is the percentage of the total number of applications for parole; it would have to be that.

Senator Williams: Perhaps I should rephrase my question. Is there a fair number of Métis and Indian applicants for parole, in view of the very large population of Métis and Indians?

Mr. Street: Yes, there is senator. Unfortunately, we do not compile statistics according to ethnic background. A considerable number of Indians, Métis and other members of the native population, however apply for parole. We go to some pains to consider them. Our officers in the field are in touch with their councils, tribes and representatives on the reservations in making arrangements for their parole, supervision and welfare.

In addition, two years ago we hired eight parole assistants of Indian origin. Two, unfortunately, have since left our employ and two are on educational leave. Four work in our offices in the west.

Senator Williams: Four seems to be a very small number when possibly 25 per cent of the inmates are Métis and Indians. I have nothing to qualify the percentage of the population.

Mr. Street: This was specially done but Indians and Métis are welcome to apply at any time. However, most of our officers hold the degree of Master in Social Welfare and we have not found too many mature persons so qualified. This was a special project for which we reduced our qualifications. These parole assistants were hired even though they did not have the university education and degrees in social work which are usually required. We do have a high percentage, I know, of Indians, Métis and other people getting parole. Since we do not keep statistics on them I am unable to give you exact figures. However, I will do what I can to get you the information.

Senator Williams: Thank you.

Senator Goldenberg: May I come back to the point that was being discussed when I left the committee to answer a telephone call? Perhaps Mr. Street could elaborate on such co-ordination as there may be of institutional and parole plans for an inmate. If Mr. Street has already answered that question, I will not pursue it.

Mr. Street: Collaboration between our people . . . ?

Senator Goldenberg: What co-ordination is there between institutional and parole plans for an inmate? Is there co-ordination?

Mr. Street: Yes, there certainly is, senator.

Senator Goldenberg: Is it satisfactory co-ordination?

Mr. Street: Yes, I think so. Perhaps Mr. Carabine could comment on that. But, as he indicated to you, there is a classification board which decides on parole. Sometimes our people sit on those boards to decide the program, and when a case is being reviewed our officer interviews them, and then interviews the classification board and they discuss the program.

Mr. Carabine: There was a memorandum directed to both services, from the heads of each service, with respect to a rather different topic, that of day parole and temporary absence. I would like to read a paragraph of this memo which was sent to both the penitentiary and parole services. This was something that was agreed to in principle, but like all developing programs it is somewhat uneven. The basic job was case preparation for parole supervision. Other than that our staff are encouraged to go into new ventures.

The inmate's total sentence offers a total program opportunity with two facets, institutional and community. The parole service representative should be involved in the total planning of individual programs, beginning with classification. Their representatives may attend treatment and training boards if they so wish and offer any advice they may have.

That was written well over a year ago. As I say, the basic job is there, and it depends on other circumstances if officers have time to get into these things. Day parole and temporary absence, and early involvement with the inmate by way of classification boards is a new venture, but several of our staff are now directly involved with the institutional personnel—that is, the classification and others in the penitentiary service—with respect to selection for day parole. Also a few of our officers are actually on the classification board.

I cannot answer the question with respect to classification officers. However, I may point out obliquely that the executive director of the parole service formerly was a classification officer, that our board member, Karl Stevenson, who is at the back of the room, formerly was a classification officer, as I myself was. Perhaps that indirectly answers something.

The other point that I should like to make is with respect to the question of probation. We are now developing—and Senator Hastings might be interested in knowing that it is going well in Calgary and Edmonton—a concept on tentative experimental steps to do, in the absence of a pre-sentence report, a post-sentence report, both of which are, in effect, a community assessment to find out the background, the families, and so on. We are gradually working our way into this. This gives us the type of information that would normally appear in a pre-sentence report.

Senator Hastings: I am always glad to hear that Edmonton and Calgary are in the forefront of penal reform and enlightened treatment of inmates. You have completed the file, and you now turn it over to the board.

Mr. Carabine: Prior to the panel leaving for the hearings the material is normally available to them for study. They

then go to institutions in Ontario and Quebec on a monthly basis, and in the east and west, every two months, for the purpose of having a hearing. There is a panel of two, and in attendance are the penitentiary classification officer who knows the inmate as well as the parole service officer who interviewed the individual.

Senator Hastings: The hearing is held in the penitentiary and the man is interviewed. I notice you say, with respect to classification, a penitentiary official; you use the term "classification officer". Is there any assurance that the man's individual classification officer is present?

Mr. Carabine: That is the person who is there.

Senator Hastings: You have various classification officers in the penitentiary. Are they all there?

Mr. Carabine: No, they are not all there. The classification officer who has dealt with this man is there at the hearing.

Mr. Street: That is what you would call his individual officer. He is the one who is familiar with the case, and he is there.

Mr. Carabine: As is the parole officer who interviewed him.

Senator Hastings: Let us now go through the decisions. Would you explain "Parole is Gradual"?

Mr. Street: It means that before we consider putting him on parole we want to give him a bit of gradual release. He may have been in prison for a long time and it is desirable to have him slowly and gradually get used to freedom on parole. So he is taken out for a few hours a day until he gets used to it. If he has been in prison for 10 years, it is almost heartless to turn him out without any preparation. He does not even know how to buy a cup of coffee. In such sentences we provide a gradual release program before he is released on full parole.

Senator Hastings: Who provides that program?

Mr. Street: We do, with the co-operation of the penitentiary people.

Senator Hastings: What about "Parole for Deportation"?

Mr. Street: It means that a man has to be deported; so he is released on parole and goes to the United States or somewhere in Europe. He is turned over to Immigration.

Senator Hastings: What about "Parole in Principle"?

Mr. Street: "Parole in Principle" is somewhat misunderstood. When we started these parole hearings we were flooded with applications. Our staff may have been behind and we had to get the cases done in time. Rather than cause too many delays, the members would interview them at the institution and the community investigation report might not have been finished. They would therefore say "parole in principle", the idea being that if everything is all right in the beginning, and nothing is too negative in the community, or he represents that he is going to get a job or go to school, in such cases they grant him "parole in principle". If he can get a job or go to school, it will take

effect as soon as the job or school comes along. It is in order to avoid any further unnecessary delay. It does not happen as much now as formerly.

Senator Hastings: What about "Minimum Parole"?

Mr. Street: I suppose one might call it a special project which was designed some years ago when there were not as many people being granted parole as there are now. We felt that if a man was to be released in a month or two, it would be highly desirable to have him released on parole if he would accept it. As a result of that we offered, without too much screening or selection, the minimum parole to certain types of inmates. Those inmates who were considered to be potentially dangerous and also sex offenders were excluded. In effect, we offered to give them one month for every year of sentence they had, if they chose to take the minimum parole. What it amounted to on a two-year sentence was two months out of prison for eight months supervision.

Senator Hastings: I think the committee would like to know the conditions that you always follow with respect to granting parole.

Mr. Street: The conditions are set forth in our brochure.

The Deputy Chairman: Would you read them into the record?

Mr. Street: I will be glad to go over them again. The conditions on a parole certificate are that the inmate will: report to his parole supervisor as required; report to the police—usually once a month, although in some cases this is not possible; support his family, if he has one, and fulfil his responsibilities. If he is employed, he is not allowed to leave his job without permission, nor is he allowed to leave the area without permission. He is also to follow the instructions of his parole supervisor.

Mr. Genest, the Chief of Parole Supervision, perhaps can give you more details in that respect.

Senator Hastings: We will come to that later.

What about "Parole Cancelled"?

The Deputy Chairman: That will come up later.

Senator Hastings: I suppose "Parole Denied" is straightforward.

Mr. Street: It simply means he did not get parole.

Senator Hastings: Do you set a future date for another hearing in cases where parole is denied?

Mr. Street: If he is serving a long sentence he is seen every two years. In the case of an inmate serving an indeterminate sentence, we are obliged to review his case every year.

Senator Hastings: Can you explain "Parole Deferred"?

Mr. Street: "Parole Deferred" means something less than a two-year deferral. In other words, if an inmate is denied parole he would be seen in perhaps two months or a year—something less than two years. Parole might be deferred to a later date in the hope that the Board would see some kind of improvement.

Senator Hastings: And could you explain "Parole Reserved"?

Mr. Street: This occurs when the Board is waiting for reports. In other words, they do not want to tell the inmate that he is not going to be paroled, because the report might be favourable to the inmate. The board could be waiting for a psychiatric report or a psychologist's report, or some information which they need in order to make their decision.

The Deputy Chairman: That seems to complete the hearing stage. Is everyone satisfied with the information?

Senator Thompson: Mr. Chairman, I wonder if Mr. Street could describe what exactly takes place at a hearing?

Is the classification officer present at the hearing, and does the inmate know what the classification officer's report contains? In other words, is he allowed to see the report?

Mr. Street: I believe he is.

Mr. Stevenson is here and perhaps he will correct me if I say anything with which he disagrees. He handles more of these hearings than I do.

Generally speaking, senator, I believe the inmate knows, in a general way, what is in the report. In other words, he knows whether it is favourable or unfavourable. I think it is the duty of those dealing with the inmate to give him some idea of how he is getting along or of what is contained in the report, without necessarily giving him too many details which would compromise the person giving such information. In that sense I think the inmate has a fairly accurate idea of what is contained in the report. He may not actually see the full report, but he has some idea of what it contains.

Mr. Stevenson, do you agree with that statement, or is that going too far?

Mr. B. K. Stevenson (Member, National Parole Board): I agree with your statement.

Mr. Street: Some of the information contained in the report has to be considered on a confidential basis. If the classification officer revealed negative information it could endanger another inmate's life or the life of a guard.

Senator Thompson: Yes, I appreciate that.

Assuming the parole officer is also present and he makes it known that, in his judgment, the inmate should not be released until he is further rehabilitated, but the Board, in its wisdom, decides that the inmate should be released, would that inmate have difficulty working with the parole officer? Does that happen at all?

Mr. Street: I suppose it could happen because the Board certainly is not bound by the recommendation of a parole officer. I would say that the number of cases where the Board disagrees with the assessment of the officers concerned is less than 10 per cent.

Senator Thompson: Is there a feeling, Mr. Street, on the part of the inmates that they do not get a fair hearing because they do not see all of the reports?

Mr. Street: Occasionally an inmate does write to me saying that he did not get a fair hearing. This does not happen very often, but when it does I refer it to the members of the Board concerned.

Generally speaking, I think the inmates are pleased to appear before the Board, and I believe they do get a fair hearing. You know as well as I do that you cannot please everyone.

Senator Gouin: I should like to know whether there is a psychologist's report contained in the file of an inmate?

Mr. Carabine: In some cases, yes, but not in all cases, except with respect to intelligence and perhaps with respect to personality. Those are tests as opposed to individual interviews.

In cases where an inmate has asked to see a psychologist or if he has been consulting a psychologist or a psychiatrist, then these reports would be in his file.

Senator Gouin: Is there a psychologist attached to the Board?

Mr. Street: Not other than Mr. Carabine.

That is right, is it not, Mr. Miller?

Mr. F. P. Miller (Executive Director, National Parole Board): There are some members on our staff who are trained in psychology, but we do not hire people specifically as psychologists.

The Deputy Chairman: Do I understand that the psychologist's report is limited to the inmate's intelligence?

Mr. Carabine: His intelligence and his personality.

The Deputy Chairman: Yes.

Mr. Carabine: That is with respect to routine availability, but in certain selected cases, and there are a number, additional reports may be required. Every inmate does not have a psychological or psychiatric report as a blanket routine thing.

The Deputy Chairman: If a man is convicted of a sexual offence, would you automatically have a psychiatrist or a psychologist examine him and make a report, or do you deal with that type of individual without a report?

Mr. Carabine: I would say there have been sex offenders dealt with without a psychologist's report, but I think this would be a rare event. In the vast majority of cases concerning sex offenders we would either have a psychologist's report or a psychiatrist's report. We sometimes have as many as three and even more reports in the case of individuals who have been determined to be dangerous sex offenders.

Senator Goldenberg: Mr. Street, do the members of the Board ever run into the problem of having to distinguish between the inmate who is a con artist and a good talker and those who lack those characteristics?

Mr. Street: Yes, I am sure they do. Of course, we can be conned too, because I am not suggesting we do not make mistakes in judgment. If the man is going to do that, he will have to con many people. I would say that generally

speaking they are fairly easy to recognize. Some of them are extremely clever, as you probably know from your earlier interest in these affairs. Yes, that happens, but he would have to fool many people to get by.

Senator Fergusson: Are there any social workers on your staff, and do they make reports at the time of the hearings?

Mr. Street: We have about 250, all with master's degrees. We have the highest qualified branch in the government service.

Senator Fergusson: Do they make reports?

Mr. Miller: Social workers, psychologists, criminologists and sociologists are hired by us as parole service officers. They are not specifically psychologists, social workers and criminologists. It is a broad field. They do a report for us, with their various trainings and backgrounds.

The Deputy Chairman: Perhaps we could have a file with us for our information, giving the type of qualifications you establish for a person who makes application for employment as a parole officer, without going into it too broadly. Is it agreeable to the committee that we have that information?

Hon. Senators: Agreed.

The Deputy Chairman: Of course, we can get the Parole Board witnesses back at any time if we want to ask more questions.

Senator Thompson: You mentioned psychiatric reports, but I gather employment opportunities are something you are keen on trying to get. I can see that in some cases it is very tough to be constantly working to get enough opportunities in the community for ex-offenders. Do your people meet with trade union officials in order to try to get their support?

Mr. Miller: I could not answer that in detail. I have read reports and comments and talked to officers who have done this. It is part of the community contact, as would be service clubs, after-care agencies, manpower and so on. It is a collective thing. To answer your question specifically, they do not have instructions in that sense, but they automatically do it; and would certainly also be in touch with major employers in the community. There is that constant contact.

Senator Thompson: Are government departments contacted for job opportunities?

Mr. Street: You mean to get a job in the government service?

Senator Thompson: Yes.

Mr. Street: Yes, we have tried, and we have some of our people working in the government service. We investigate every source available. While it is sometimes difficult for people coming out of prison to get a job, in the study we did only last June for this year, which is not the best year for employment in Canada, as you know, of the about 3,000 parolees, which is set out in the brief, 78 per cent were working.

Senator Buckwold: This may be a somewhat difficult question for you to deal with. In coming to a decision, as the Parole Board, what is the relationship of the seriousness of the crime committed, or the severity of the sentence, to the social rehabilitation possibility of the man and his social acceptance in the community?

Mr. Street: If it is a serious crime, in the sense that violence is involved, we are naturally a little more careful than we would be if it were just a simple theft, fraud offence, passing worthless cheques or something like that. Naturally, we are very careful because of the consequences that could follow if the man did it again. We are not concerned with the length of the sentence or the propriety of the conviction; that is none of our business. We are obliged to review at the eligibility date, and our job is to decide whether he can safely be released on parole. Certainly we have to consider the seriousness of the offence, especially if violence is involved, and the community acceptance of him—in other words, is he ready to be paroled, and is the community ready to accept him?

Senator Buckwold: In other words, a model prisoner, with good rehabilitation possibilities who has committed a serious offence, might have a better chance of release than a difficult prisoner who has committed a lesser offence?

Mr. Street: If he was a model prisoner with, do you say, good community acceptance?

Senator Buckwold: Yes, he has a better chance of rehabilitation.

Mr. Street: I would say he would be better off. Even though the crime were serious, if all the reports and the assessments made of him indicated that he was not likely to do it again, and if he had a lot of support on the outside, I would say his chances of getting parole would be fairly good. We are paroling two out of three of those who ask for it now, which is one of the reasons we are criticized. Does that answer your question, senator?

Senator Buckwold: I am a little concerned about this. I am speaking now from the community point of view.

Mr. Street: We have to think about the question of community acceptance. As you know, there was a case mentioned yesterday which we thought was ideal for parole, and we received a certain amount of criticism because the offence was considered to be serious.

Senator Buckwold: Perhaps I could ask you what you mean by "community acceptance".

The Deputy Chairman: Yes, perhaps we should have that term defined, as it is being used so much.

Mr. Street: I guess there are two different things. I was referring to a certain amount of criticism from the public in this particular case. Generally speaking, by "community acceptance" I mean: Does he have a place to live? Does he have a family, do the family welcome him back, and will they support him and help him? Does he have a wife and, if so, does she want him back and will she help him? Does he have a job to go to? Does he have friends, people willing to help him? It was community acceptance, in that sense, that I assumed you were referring to, and that is very important. But there is the other feature, of course.

Senator Buckwold: I was referring to community acceptance by the greater community.

Mr. Street: That is the other part of it that I referred to. Sometimes you run into what we call a cause célèbre.

Senator Buckwold: The kind of thing that worries the community at large on occasions.

Mr. Street: Yes, that is a problem.

The Deputy Chairman: With permission, may I ask a question. "Community acceptance" is so broad a phrase that it is subject to all kinds of interpretation. I am thinking now of a case where a person might have been convicted of a crime in, say, a small community, and the community was really upset about it. To send him back to that community would mean that he just would not get a chance. Do you have any procedure whereby in such a situation you decide that maybe the fellow should go to an entirely new community to get started?

Mr. Street: Yes. That is one of the types of things we find out in a community investigation report, especially if it is a small town. We find what sort of acceptance there will be, and whether everybody will be up in arms about this man going back there. We have to think about that, and sometimes we recommend that he change his parole centre and we set him up somewhere else where he will not run into that community criticism. Yes, that situation arises.

The Deputy Chairman: It could be a family prejudice.

Mr. Street: It could be, yes.

The Deputy Chairman: Now we have got the fellow paroled.

Senator Hastings: Before we leave parole, I should like to pursue another question.

The Deputy Chairman: We are having trouble getting this fellow out!

Senator Hastings: Probably the worst decision you can give is a reserve decision. I will not quote statistics, but if you look at them you will find that the province of Quebec has an unusually large number of these decisions. This is about the worst decision to give a man. He has built himself up over the years to meet this Board, he gets this decision and goes back to wait. It is an agonizing period for him. He does not know whether he is in or out. The men have a term for it, "hanging on the gate".

Mr. Street: Yes.

Senator Hastings: They go through a terrible psychological experience. This precipitated my inquiry to you, sir. I just took 40 who were reserved at Leclair Institute and you probably have my letter in front of you. Out of the 40, 26 did not have the community report.

Mr. Street: We are dependent on people outside our organization to get these reports for us. I do not know how many of those were done by us and how many by other people, but we have to wait until we get them.

Senator Hastings: I appreciate that.

The Deputy Chairman: But you had four months?

Senator Hastings: This is only a month in advance, I think. Even some of those cases did get paroled in time, did they not?

Mr. Street: Yes, some of them did get paroled in time, but some are still waiting for a decision because we had to ask persons outside our organization to get this information for us and, as they are busy, they did not get it done.

Senator Hastings: Do you have adequate staff in the province of Quebec?

The Deputy Chairman: You mean his own staff?

Senator Hastings: Yes, his own staff.

Mr. Carabine: I think it is fair to say that we do.

Mr. Street: Mr. Miller, how would you answer that?

Mr. Miller: I think we have adequate staff there, as compared with the country as a whole. We have been in an expanding period and in certain areas a backlog has built up, for a variety of reasons, more than in other areas. It is a fact that in the Laval office they had a turnover of staff rather rapidly, for a number of reasons, and the new staff had to fit in. To get the work done has not been as easy as we would like it to be. We are in the process of adding staff all across the country.

Senator Hastings: Again, from the inmate's point of view, this is about one of the worst decisions you can give a man, except an outright denial. It is a terribly agonizing period. We set the dates and we know, on a murder conviction, nine years ahead of time that this man will be appearing on a certain date; and you know, Mr. Street, he is going to be faced with reservations and reservations. The worst feature of it all is that you reserve it three months and then you can reserve it in Ottawa for three and for three and for three, and he knows nothing about those reservations that you are making here in Ottawa. He is sitting in the penitentiary. There was a case in Manitoba of a man who sat 18 months.

Mr. Street: A murder case?

Senator Hastings: Yes.

Mr. Street: It takes a long time for it to go through, with all the processes it has to go through; but I guarantee that all those delays were not caused by us.

Senator Hastings: I am not accusing you. I know it is because you could not get your psychological or psychiatric reports; but I say that you know nine years ahead of time, on a murder conviction. Then when the man comes up it seems that there is an automatic reservation until you get further reports.

The Deputy Chairman: May I make a suggestion, Senator Hastings, which I think might be useful? You are dealing with two things. One is a murder conviction, and the decision of the Board has to be reserved because it has to go to the Cabinet. Can you break it down to the type of reservations that are required because of the statutory provision that the Board's decision is subject to approval

or disapproval; and to the other type, those cases where the Board members themselves make a reservation, for whatever reason? I think you have two separate types.

Senator Hastings: Certainly, you can have a reservation because of the report to Cabinet, but most of them are reserved for further psychological or psychiatric reports. I am speaking of murder cases now where the murderer is convicted. These are dragging on into quite a period of time. Also, you have the ordinary reservations because of community reports. You know a year ahead of time that this man is coming up on that date.

Mr. Street: Having a report a year ahead is not much good to us. We want all reports within six months, especially psychiatric or psychological reports. The members are not going to be happy with psychiatrists' reports two years old, or a community report two years old or even one year old. That is why we try to have everything within five months. I am not suggesting that we have not been responsible for some delays, but I am saying—not just suggesting—that most delays are caused by people outside our organization over whom we have no control. We have to refer to psychologists and psychiatrists for reports, and we have to wait until they get around to giving their reports to us. The members are not willing or able to make decisions until they receive the reports.

The same thing applies to community investigation reports. We cannot parole an inmate until we know where he is going and until we know something about him. If we refer it to an outside agency, we have to wait until we get it. We do the best we can, but because they are busy, and for various other reasons, we do not always get the reports in time.

Most of the cases you asked me about were in that category. I think you referred to 26 cases. Well, those were referred to outside agencies.

Senator Hastings: I do not know to whom they were referred. I realize you did not have the community report and were forced to reserve the decision. I appreciate that.

Mr. Street: That is one of the reasons why we thought we should do it ourselves.

Senator Hastings: I think you should, too. If you need additional staff, then you should have it.

Mr. Street: We have to do what we are told.

The Deputy Chairman: If you are going to have a hearing, before commencing the hearing could you not arrange to have all the information you are going to require? In other words, you could postpone the hearing rather than delay the result. I know you operate a little differently from that.

Mr. Street: We try to get the information before. That is why we start all the final processes five months ahead of the eligibility date. The hearing is one month ahead, so that we will know about and can allow for any last-minute delays. At least we have a month. In some of those cases the inmate did get out on his eligibility date, even though we had had to reserve it at the time. That is the way we try to do it. It is not fair to let the inmate go past his eligibility date. If he is suitable for parole, he is entitled to be released on parole on his eligibility date. We try to get all the reports ready and to gear everything for that date.

Senator Thompson: A moment ago, Mr. Street, you said that you wished you could do the community reports yourselves. Why cannot you?

Mr. Street: Well, if we have an officer in Montreal—and we have 14 there, I think—we say, "Do it!" We do not say, "Please, would you do it?" We say, "Do it!"

Senator Thompson: But why did you say you wish you could do it yourselves? Were you suggesting that you cannot; and, if so, why is that?

Mr. Street: Because we have instructions to refer 50 per cent of our cases to outside agencies.

The Deputy Chairman: Is this where your problem arises?

Mr. Street: Part of it. Then there is the other problem concerning psychiatrists and psychologists. We do not hire any of them.

Senator Laird: Mr. Street, are you saying that you are short of psychologists and psychiatrists?

Mr. Street: We do not have any on our staff, sir. I would say, yes, that there is a shortage throughout the country, generally speaking, although we are able to get them. As you know, psychiatrists can make more money in doing more pleasant work in private practice, industry, and so on, than in prison work. So, even though they are well paid, it is hard to get men interested in prison work. It is fair to say that there is a shortage, although the situation has greatly improved in the last few years. We are able to get them, but sometimes there are delays.

Senator Goldenberg: On this question of a shortage of staff, you were talking about mandatory supervision . . .

The Deputy Chairman: We have not reached that stage yet, senator.

Senator Goldenberg: Mr. Chairman, I am referring to the matter of the shortage of staff. I was going to say that that will put further stress on the staff resources.

Mr. Street: Yes, it will.

Senator Goldenberg: Have you been planning to meet the situation?

Mr. Street: We have been planning for a year and a half. This will mean another 70 persons coming out on parole who do not even want to be on parole, and we will have to contend with them amongst the other problems which we will face.

Senator Buckwold: Is there such a thing as a legal aid program for an individual parole applicant to help him in appearing before the Parole Board?

Mr. Street: In some provinces legal aid is available to them, but lawyers do not appear before the Board. However, they can write to us.

The Deputy Chairman: This raises a fairly important question, and I think we may want to go into it later, so I am going to ask Mr. Street right now if he will deal with this so that the committee will understand it. What is the hearing? What representation or assistance is available to

a person making an application, and why do they follow the procedure they do?

Mr. Street: Is this dealing with the hearings?

The Deputy Chairman: What I have in mind is this. Could you explain, so that the committee will understand, first of all, what the hearing is, starting out with the difference between an administrative and judicial procedure; and then going on to the actual process by which the hearing is conducted, what assistance the prisoner is given in providing for his application and what provision there is for his appearance and otherwise? I think this is what you have in mind, Senator Buckwold. I think it will be of help to everybody if you tell us precisely how you handle this situation at the present time.

Mr. Street: So far as the actual hearing is concerned, the inmate appears in person and he is able to make whatever representations he wishes on his own behalf. So far as assistance offered to him is concerned, he has been consulted and interviewed by a parole officer who would be able to give him whatever advice and assistance he wants, and by the classification people in the institution who would tell him what is involved in the hearing, and of course he knows from other inmates what hearings are like. So that is the way the hearing goes, and he may make what other representations he wishes. Then the members ask him questions about his parole program, his background and various other things, to clear up certain problems and points in the interview. So far as legal assistance is concerned, in some provinces legal aid is available, or they may engage their own lawyers at their own expense who may write to us and make representations on their behalf. They may help him plan his parole program.

So far as the actual decision of the Board or the panel is concerned, I do not think there is any use telling the inmate whether it is an administrative or judicial decision. To him it is the most important decision of his whole life, and it is a decision which affects his liberty and whether he gets out on parole or not. So it would be just mumbo jumbo to him to explain that it is an administrative decision rather than a judicial one. No matter what it is called, it is a very important decision to him. But even though I am very conscious of our very awesome responsibilities and powers in regard to this man's life and liberty, I do not think it involves legal matters. Whether he is released on parole or not is a matter of whether it appears that he is safe to be released. Can he be released? Can he be controlled in the community? Is he a suitable risk, and so on? None of these is a legal matter. We do not allow or encourage lawyers to attend a hearing. They may very easily talk to us or write to us at any time and make their representations to us on the inmate's behalf.

The Deputy Chairman: But they are not allowed to be at the hearing?

Mr. Street: No.

Senator Goldenberg: Some inmates are at a great disadvantage in having to present their own cases, are they not?

Mr. Street: I suppose, if you mean they are inclined to be shy or introverted or perhaps nervous.

Senator Goldenberg: Or they cannot express themselves properly.

Mr. Street: Yes, and on the other side of that, you have an inmate who is a real con and speaks very well. In such a case as you are referring to, our members are at some pains to make the inmate feel at ease, to draw him out and ask him questions. There is always the possibility that one person will express himself better than another. Some lawyers are better than others. However, I would say in the case of a person who is nervous or shy, we try to overcome that handicap.

I remember one evening in Joyceville we were sitting very late and we wanted to return this man so he could have his supper. He said that he wanted to wait. He said, "I do not want any supper. I want to know if I am going to be paroled." He would have been a nervous wreck if we had taken him back. But when he came in we put him at ease and made him feel more comfortable, especially after we granted his parole. There is no reason to be nervous, especially after we grant a parole.

Senator Goldenberg: What happens to a person who is, to a degree, mentally retarded, as I am sure some of them must be?

Mr. Street: The same thing happens, we try to make him feel at ease. They study the file before the hearing to ascertain what kind of person they are dealing with. There are some pains taken to make him feel at ease so he will not be nervous. Roughly; only one-third do not get parole; at least, that is the way it has been in the last year. We try to be careful that we do not miss a good person.

Senator Goldenberg: I suppose if an inmate does not speak English or French you provide an interpreter.

Mr. Street: Our Board members would interview him in French.

Senator Goldenberg: But if he does not speak English or French—

Mr. Street: I do not recall that situation ever occurring.

Mr. Stevenson: We would find an interpreter.

Senator Hastings: We have an Eskimo in Drumheller whom we will be interviewing shortly.

Mr. Street: One of our members can speak the Indian language.

The Deputy Chairman: Let us stick for a moment with Drumheller in Alberta. How do your Board members, having arrived in Alberta for a hearing at ten o'clock in the morning, make all the decisions which they have to make in evaluating a person to determine whether he is slick and has to be watched or is slow and has to be helped along?

Mr. Street: They have already done some of this. Mr. Stevenson, if you wish to, you can comment on this. However, they do not start at 10 o'clock. They begin at nine o'clock, sometimes at eight o'clock, and they sit through until nine or ten in the evening. But they have read the files beforehand and they have a very accurate idea about with whom they are dealing.

The Deputy Chairman: The files are prepared by various people on the staff?

Mr. Street: Yes, and the reports are there so they know ahead of time.

The Deputy Chairman: Now, they have the man in front of them, they have read the information which has been compiled by various people, and they make an instant decision as to what type of an individual he is.

Mr. Street: I would think it would not take very long to ascertain what kind of a person you are dealing with. Perhaps you would like to comment on this, Mr. Stevenson.

Mr. Stevenson: There are usually four persons in the room, two members of the Board, a classification officer and one parole officer. We discuss the case first, asking the classification officer to give us a summary of the institutional report. We then ask the parole officer to summarize his report. Although we have these reports in full detail we like to be brought up to date. The inmate then enters and we discuss his case with him. The interview will last perhaps 15 minutes, half an hour, maybe one hour. The inmate then leaves and we discuss the case further, arrive at a decision, ask the man to return and give him that decision.

Mr. Street: I might say that Mr. Stevenson was our regional representative in Vancouver before his appointment to the Board. He was also a classification officer in the British Columbia penitentiary for some years prior to that.

The Deputy Chairman: In other words, Mr. Stevenson has had experience first as a classification officer, then as a parole officer and now as a member of the Board.

Senator Hastings: You used the term "a classification officer" again. Is it the man's individual classification officer?

Mr. Stevenson: That is right. Sometimes the classification officer states that he does not know the applicant very well. I know from my own experience that with a case load of 150 to 200 inmates he may have seen an individual only once or twice since his admission. He may, as I did when I was a classification officer, have seen the man on admittance to the institution and again at the time of his application for parole. This is perhaps seven or eight months after his admission. That is the type of individual attention that is possible.

The Deputy Chairman: For a classification officer?

Mr. Stevenson: Yes, in most cases.

Senator Hastings: You said sometimes and now you say in most cases. Which is it?

Mr. Stevenson: In most cases.

Senator Hastings: For that reason the classification officer hardly knows the man he represents?

Mr. Stevenson: That is right. He has the background information and so on, but very few are involved in an intensive counselling process.

Senator Hastings: Is this because of lack of staff?

Mr. Stevenson: Yes.

Senator Hastings: So the man is really very much alone.

Senator Williams: Mr. Stevenson, in the area of Vancouver and new Westminster there is an institution in which I understand there are a fair number of our people. In your experience with those who apply for parole, did you find that their educational standards were very, very low, putting them at a disadvantage in expressing themselves to people of very high standards?

I have heard this morning that those acting on the part of the establishment, if I may use that word, hold master's degrees. In view of this it is difficult for the Indian or Métis inmate to receive a full or understandable picture. In view of that, how do you reach them?

Mr. Stevenson: I agree that it is very difficult with any member of a minority group who comes before us to persuade him to speak freely. We do our level best. Sometimes we know they are nervous and ask observers who might be in the room to leave so that there are just three of us together. We try to phrase our questions as simply as possible. We try to get over to him that we are interested in helping him through parole. That is the main thing.

Senator Williams: If he is fortunate and gets across to you or other people in your category, and he has been a transient possibly for a number of years—he could have come from any part of Canada and ended up in Vancouver or New Westminster—if he is qualified for parole, where does he go? Then comes the question of community acceptance. Is he shipped back to his reservation, whether it be in Manitoba or in the Yukon? He may have been a foreigner to his own people for perhaps the past decade. What happens?

Mr. Stevenson: We have to arrive at some decision. If, from the plan that he presents to us, it is considered not to be in his best interest for him to return to the very environment that brought him into prison, we might come up with another one of these terrible "reserve decisions", and try to get someone to work out a new plan with him rather than say no at the time. We may think that he needs a chance and that he can do well on parole, if the environment is correct. So a "reserve decision" is the only fair way at that point, and to have somebody work with him to develop a new plan.

Senator Williams: This terrible "reserve decision" leaves him hanging in suspense until possibly the next year?

Mr. Stevenson: Yes.

Senator Hastings: Do you not agree that in western Canada, where our Indian prison inmate population runs from 38 to 46 per cent, these boys are at a great disadvantage, as they are throughout life?

Mr. Stevenson: I agree, and I am very happy to go out on panels to the west with Mr. Maccagno who is able to speak some Cree, because the minute he says a few words of Cree to an Indian inmate it helps relax the whole atmosphere.

Senator Williams: There is very little Cree spoken in British Columbia, except in the northeastern portion of the province.

Senator Goldenberg: I happen to know British Columbia very well, and the Premier of British Columbia is always complaining that the rest of Canada comes to settle there. Does not the problem of community acceptance create a very serious problem in British Columbia? As you know many people come there from the rest of Canada as transients and this creates problems for people who have been there for some time. The problem of community acceptance is there, and people are placed at a great disadvantage.

Mr. Stevenson: That is right. All ex-inmates have a handicap because they have a criminal record.

Senator Goldenberg: But they have a particular handicap. An inmate from Quebec in a Quebec penitentiary would probably have his family there, but what happens to these other people? Do you reserve your decision?

Mr. Stevenson: If no satisfactory plan can be worked out, then we have to arrive at a denial or a deferral, if more than two years is left on the sentence. We go through hell in coming to decisions of this type, because we often feel that the fellow could benefit from parole and yet there are no resources to help him. I dislike making such decisions.

Senator Buckwold: Is there any validity to what you sometimes read in the newspapers about prisoners wanting to achieve what university students seem to have achieved, that is to become part of the decision-making process of the institutions?

Would it be any improvement in the parole system if, in fact, responsible inmates passed some judgment on their peers in so far as parole is concerned? Do you feel they could be objective?

Mr. Stevenson: I think the inmates know each other very well; they know the phoneys better than we do, but whether they would put themselves in the position of judging another inmate, I do not know.

They try to do this in group counselling and it works in some institutions while failing in others. I believe Matsqui penitentiary is using this method to some extent, but it is difficult to break down the values, and so forth, of the inmate subculture.

Senator Buckwold: You do not feel they could be objective?

Mr. Stevenson: It would be quite difficult.

Senator Thompson: I believe you stated you started hearings at 8 o'clock and sometimes 7.30 in the morning and you go through until 9 o'clock at night. What is the largest number of applicants you have heard in a day?

Mr. Stevenson: I believe 30 applicants is the largest. We average about 15 to 20 a day.

Senator Thompson: That would mean that some of them would spend very little time before you.

Mr. Stevenson: Yes. I do not know what the average is. One of our members, Mr. Maccagno, keeps a record of the length of time an inmate was present before the board, and the length of time the board takes to come to a decision and so forth. He has all of this information covering the last two years. Quite often, senator, we do not finish at 5 o'clock; we sometimes work until 7, 8, or 9 o'clock.

Senator Thompson: But you have had as many as 30 applicants before you in a day, although it is unusual. Now, does that mean that you require more members on the board, or do you need more hearings, or what?

The Deputy Chairman: You may express an opinion, Mr. Stevenson.

Do you find you are overloaded?

Would you care to rephrase the question, Senator Thompson?

Senator Thompson: Well, I will not press it. I have the feeling of it.

The Deputy Chairman: And you have a feeling of the answer, I think, too.

Senator Thompson: Yes.

The Deputy Chairman: Senator Fergusson?

Senator Fergusson: I realize there are a great many more men than there are women in our institutions, Mr. Street, several thousand men as compared to about 87 women, but all reference to parole has been to "the inmate" and to "him" and to the "man". There has been no reference whatsoever to the women inmates.

The Deputy Chairman: The male includes the female.

Senator Fergusson: I do not accept that, Mr. Chairman. That may be the interpretation in some of our statutes, but that is not my interpretation when I am making a speech. Could you tell us how many women inmates have been granted parole in the last year, and how many applied and were refused?

Mr. Street: I will try to get that information for you, Senator Fergusson, if it is available.

The Deputy Chairman: Do you have another question while we are waiting for that answer?

Senator Quart: I will ask a question in the interim.

Mr. Stevenson, you mentioned something about observers. Do you allow observers to be present when you are interviewing an applicant for parole, or are there just the two of you with the prisoner? Do you allow observers in as well as just the two of you with the prisoner?

Mr. Stevenson: Yes.

Senator Quart: What type of observers?

Mr. Stevenson: There may be the psychologist from the institution. In some institutions there are guidance officers and classification officers. Occasionally we are asked by the John Howard Society or the Salvation Army if they

can sit in. They may have been interviewing the man for some time, they know him. They can contribute something to our discussion, so we allow them to come in.

Senator Quart: They actually assist the application for parole?

Mr. Stevenson: Yes, right.

Senator Quart: Do the chaplains sometimes take part?

Mr. Stevenson: Yes, we have had chaplains in too. In fact, I think it is in Springhill that they take a particular interest; they ask to come in and sit through it, and the inmate is very happy to see him there.

Senator Quart: I am sure he is.

Senator Thompson: Do you travel across Canada?

Mr. Stevenson: Yes, we do, with about 10 to 12 trips a year, lasting about two weeks each, with an average of 150 cases each time. I do not hesitate to say it is a heavy schedule. This is why I am away from home close to two weeks each month, and for a man with a family it is very difficult.

Senator Goldenberg: I want to revert to the situation we talked about earlier, which has troubled me for a long time. You have told us, Mr. Stevenson, that if two men apply for parole, you may find both are equally qualified in personality, change and so on, but one has what you call community acceptance and the other has not. The one who is qualified and has community acceptance is granted parole. The man who is unfortunate enough not to have community acceptance is denied parole; he has to complete his term. Does he not emerge a much more dangerous person? I am using the word "dangerous" but...

The Deputy Chairman: Difficult.

Senator Goldenberg: Yes, a more difficult person than would otherwise be the case?

Mr. Stevenson: I agree it would have a negative effect on him. Can we use the term "community resources" rather than "community acceptance"?

Senator Goldenberg: Yes, community resources.

Mr. Stevenson: He has no family resources, friends and so on. He feels less and less a part of society, and I am sure that when he comes out he will not make nearly as good an effort as if he had been released on parole.

Senator Goldenberg: So that by sending him back to complete his term you are really making him a worse citizen.

Mr. Stevenson: Right. But what else can we do? Would you release him to no resources with a fairly good likelihood that he is going to violate and come back, and then all we do is add more time to his sentence?

Senator Goldenberg: What happens is that he goes back, finishes his term, and then when released, being a more difficult person, he may commit a more violent offence and return.

Mr. Stevenson: Very often we try to leave the door open. We say, "Write to somebody. Try to find somebody who will give you a hand. See the John Howard Society, see the Salvation Army; see if they will give you some help in making a post-release plan".

Senator Goldenberg: Do you refer a case like that to the John Howard Society, the Salvation Army, or any other organization?

Mr. Stevenson: The classification officer is there, the parole officer is there; they would both take cognizance of that.

Senator Thompson: Just to clarify the expression "community resources", I assume that is lack of a job, lack of family support.

Mr. Stevenson: Lack of a place to stay. There are now these halfway houses which, fortunately, are coming into existence. These provide for men who cannot go back to their families, and in fact it would be the worst thing for them to do to go back. So a halfway house is a great place, and more and more of them are coming into existence.

Senator Goldenberg: There is an organization called, I think, the X-Kalay Foundation in Vancouver. Does that help to solve the problem I am talking about?

Mr. Stevenson: Sometimes.

Senator Laird: And the St. Leonard's organization.

Mr. Stevenson: Yes, there are many of them across the country which have grown up recently.

Senator Thompson: Taking the individual who I feel is most unfairly treated by our society, the one I have been talking about, would you refer him to an organization—assuming this was in Vancouver—an organization like the X-Kalay one?

Mr. Stevenson: Yes, I think so. If we felt that what they had to offer was what he needed.

Senator Buckwold: The question I should like to ask may have been asked before. This is my first attempt at this committee meeting. I am trying to get the role of the provincial jails as against the federal penitentiaries and the Parole Board.

The Deputy Chairman: I wonder if we could leave that, senator, because that is really another subject. There will be an opportunity again.

Senator Buckwold: Thank you.

The Deputy Chairman: We have the answer to Senator Fergusson's question now.

Mr. Street: Senator Fergusson, it appears that the last year for which complete detailed statistics are available was 1969, and they indicate that we granted parole to 130 lady prisoners in that year and that we refused parole to 36 in that year. So it would appear that the Board members were very big hearted with the fair sex!

Senator Fergusson: Thank you.

Senator Goldenberg: Is "lady prisoners" the women's lib term?

The Deputy Chairman: It is a courteous gentleman's term.

Senator Fergusson: Does this cover both federal and provincial cases?

Mr. Street: Yes, it does.

Senator Fergusson: I was just thinking of the federal cases really, when I was asking the question, but I am glad to have the information.

Senator Hastings: Further to Senator Buckwold's question to Mr. Street, to your knowledge, do you employ any former inmates, or Métis, or native Canadians on your staff, in the parole service?

Mr. Street: We have four Indians or Métis. I do not think we have an ex-inmate.

Mr. Miller: We do not have any ex-inmates on our staff now. We have had ex-inmates and they are ones that we have attempted to take who are actually qualified but who feel they would rather do something else. We have ex-inmates on our staff who are able to act as good parole officers. There are ex-inmates employed by several of the organizations that assist us. We have had ex-inmates involved in supervision in that way as a full-time staff on bodies like the John Howard Society. Also, we have had ex-inmates as volunteers and we have had a seminar of volunteers who assist our parole officers in the supervision. We had an excellent and sensible presentation of what is involved in parole supervision, done by an alcoholic ex-inmate. He had in his care another alcoholic.

Senator Hastings: What is your experience with the ex-inmates?

Mr. Miller: People of this type are very definitely helpful.

Senator Hastings: You say you had four Métis?

Mr. Street: Yes, two of them are on educational leave; two resigned. Those two who are on educational leave are still there, and we will get these two back.

Senator Hastings: Where are they employed?

Mr. Street: Perhaps Mr. Leroux can answer that.

Mr. J. H. Leroux, Assistant Executive Director, Parole Service Administration, National Parole Board: There are two employed on the staff in the Vancouver office; two on the staff of the Brandon office; two in Winnipeg; and one on educational leave from the Regina office.

Senator Hastings: What are they employed as?

Mr. Street: They are employed as parole assistants. They are really parole officers, but they do not have all the qualifications for parole officers, so they are given a special grade so that we can hire them. Their rank is called "parole assistant"

Senator Hastings: Do you have any limit as to the number of parole assistants you can hire?

Mr. Street: Other than a budgetary limit, no. I do not think so. As a matter of interest to Senator Fergusson, we have 19 lady parole officers as well.

Senator Fergusson: Mr. Street, not that I want to have the answer now, but can you tell me how many of those paroles were granted to women from the Prison for Women at Kingston, and how many of those who received their parole broke their parole and had to be returned to prison?

The Deputy Chairman: Mr. Street will get that information for you, senator.

Honourable senators, it is now ten minutes after twelve. Perhaps this would be a convenient time to adjourn.

Mr. Street has given me some figures on the contacts they have with the voluntary organizations. I believe this would form a useful part of the record.

Senator Fergusson: Seeing that I asked the question in the first place, I would move that it be part of the record.

Hon. Senators: Agreed.

(See Appendix "C")

The Deputy Chairman: We have just got the inmate before the Parole Board. We have not even got him paroled yet. Obviously, we are going to have to do some more work on this matter. I think all of us are resigned to the fact that we will have to hold another meeting later on.

The committee adjourned.

APPENDIX "A"

CANADA'S
PAROLE SYSTEMA PRESENTATION TO THE SUB-COMMITTEE OF
THE STANDING SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

by

T. G. Street, Q.C.,

Chairman,

National Parole Board

December 1971

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MEMBERS OF THE PAROLE BOARD

CHAIRMAN—T. G. Street, Q.C.

VICE-CHAIRMAN—A. Therrien

MEMBERS—C. Bouchard; J. P. Gilbert; Miss M. L. Lynch,
Q.C.; M. Maccagno; G. R. McWilliam; B. K. Stevenson; G.
Tremblay.

EXECUTIVE DIRECTOR—F. P. Miller

SECRETARY TO THE BOARD—G. Vincent

CANADA'S PAROLE SYSTEM

Honourable Senators:

I am very pleased to be here today to explain to you the duties and obligations of the National Parole Board and how these duties and obligations are carried out. I welcome this opportunity because despite our efforts to explain parole to everyone concerned, there is always a great deal of misunderstanding about it. During the course of your examination, senior members of the staff of the Board will be made available to you should you wish to explore, in depth or in any detail, the operations of the Board.

I—LEGAL BASIS OF THE NATIONAL PAROLE
SYSTEM

The cornerstone of our operations is the Parole Act which was proclaimed in force on February 15, 1959. The

Act established a National Parole Board. The Board is now made up of nine permanent members including the Chairman. The Chairman is the Chief Executive Officer of the Board and has supervision over and direction of the work and the staff of the Board. The Headquarters of the Board is in Ottawa, however, panels of the Board travel to the federal institutions and interview inmates who have applied for parole or who have had their parole revoked.

The Act provides that the Board must review and determine whether parole should be granted in the case of every inmate who is committed to a penitentiary, unless the inmate advises the Board in writing that he does not wish to be granted parole. Further, every application received requesting parole from inmates imprisoned in a provincial institution must be considered. There is also the duty of reviewing, once in every year, the case of every inmate who is serving a term of imprisonment of preventative detention. Under the Act the Board must review the case of every inmate whose parole has been suspended for over 14 days and either revoke the parole or continue it.

While the Board's prime function is determining whether or not parole should be granted, the Board is also called upon, under the Act, to make decisions relating to the revocation or suspension of any sentence of whipping or any Order made under the Criminal Code prohibiting any person from operating a motor vehicle. Finally, any inquiry desired by the Solicitor General of Canada, in connection with a request for clemency, is made by the Board. These requests relate to the grant of pardons based on innocence, the remission of fines, penalties, forfeitures or estreated bail.

Under the Criminal Records Act, a duty is placed on the Board to cause proper inquiries to be made in connection with any application for the grant of a pardon under that Act and to make recommendations as to whether or not a pardon should be granted.

The National Parole Board has, with two exceptions, exclusive jurisdiction and absolute discretion to grant, refuse to grant or revoke parole in the case of any person who is under a sentence of imprisonment imposed pursuant to an Act of the Parliament of Canada. The exceptions are in the Provinces of British Columbia and Ontario where the courts may impose, in addition to a fixed term of imprisonment, an indeterminate period. The Provincial Parole Board in those provinces may parole an inmate during the period he is serving his indeterminate sentence. The National Parole Board has jurisdiction over the definite part of such sentences.

While the Board has absolute discretion to grant parole, free from any outside influence, the Act sets out guidelines and limitations. The Board must be satisfied before granting parole that the inmate has derived the maximum benefit from prison, that reform and rehabilitation of the inmate will be aided by parole and that the release of the inmate on parole does not constitute an undue risk to society.

Under the Act the Governor in Council has made regulations prescribing the portion of the term of imprisonment that an inmate must serve before parole may be granted. Generally speaking, this period is one-third of the term of imprisonment imposed, or four years, whichever is the

lesser. Where, however, a person has been convicted of murder, the minimum period, since 1967, that an inmate must serve in prison is 10 years and in addition the release on parole must be approved by the Governor in Council.

II—RELATION OF PAROLE TO SENTENCE PASSED BY THE COURT

The Board is not concerned with the propriety of the conviction or the length of the sentence.

From time to time, the opinion has been expressed that the operation of the parole system constitutes, in some manner, an abrogation or interference with the rights and duties of judges in imposing sentences. Fortunately, most judges recognize that the Parole Act is an integral part of our system for the administration of criminal justice and are pleased to co-operate with the Parole Board.

In passing sentence, judges are aware of the possibility of release on parole in accordance with provisions of the Parole Act. Many judges taking cognizance of this fact have adopted the practice of making known to the Parole Board their views on the desirability of parole as a tool in rehabilitation in particular cases. Such recommendations are most heartily welcomed by the Parole Board whether they support or oppose parole.

Recommendations from judges are given the most serious consideration when the Board reviews applications for parole. Any assistance that the judge can give to the Board which will help it in arriving at its decision is greatly appreciated. We would encourage judges to continue this practice whenever they feel that there are circumstances which should be brought to the attention of the Parole Board.

Parole is a means by which an inmate who gives definite indication of his intention to reform, can be released from prison so that he can serve the balance of his sentence at large in society, under supervision and surveillance, subject to restrictions and conditions designed for the protection of the public and his own welfare.

III—BOARD POLICY IN PAROLE ADMINISTRATION

The dual purpose of parole is the rehabilitation of the offender and the protection of society. It is a means of assisting him to become a useful, law-abiding citizen, while at the same time ensuring that he does not misbehave or return to crime.

The possibility of parole provides a strong incentive to an inmate to gain maximum benefit from the prison facilities and to change his attitude towards crime. It also encourages him to maintain contact with the outside world and to plan realistically for his future. It tends to discourage association with the hard-core criminals and the anti-administration groups in prison, and gives him something to hope and strive for.

There are over 7,000 men in our federal prisons serving sentences of 2 years or more. Over 80% of these men have been in prison before, and a good many have been there many times.

There are, in addition, some 15,000 persons incarcerated in provincial jails and correctional institutions serving

sentences of up to 2 years. In many cases, because of lack of facilities and trained staff or because of the short duration of the sentence, many of these institutions lack training programs or have developed very limited opportunities for useful activities. Inmates generally are obliged to waste their time in idleness. They gain no useful experience but are instead subjected to harmful effects from associating with other criminal offenders.

The purpose of a realistic correctional program is to return criminal offenders to society as law-abiding citizens who are willing to accept responsibilities as members of the community. This cannot be accomplished by locking them up away from society and keeping them in prison where they have no responsibilities.

The Parole Board recognizes that there are criminals who have selected crime as a way of life or who are dangerous and pose a serious threat to public safety if they are permitted to be at large. Such persons must be controlled and this can be done adequately only by a prison sentence. Some suffer from mental illness and should be sentenced for treatment in psychiatric institutions. Since two-thirds or more of the people in prison are not dangerous or vicious or violent, most of them could be controlled and treated in the community and parole is one of the means by which this can be accomplished.

Treatment and training within the institution is a vital part of the reformation and rehabilitation process. Parole is a continuation of this program on the outside. The function of the Parole Board is to select those inmates who give some indication that they intend to reform and assist them in doing so, by the grant of a parole. We are looking for a distinct change in attitude and if we do not think that there is at least a reasonable chance they will reform, they are not considered.

Granting parole is not a question of being unduly sympathetic to criminals and their problems but simply a realistic understanding and appreciation of the problems and an attempt to effect a sensible solution in each case. Parole is not a matter of pampering persons who have been sentenced to prison but rather a means for helping those who want to help themselves and of giving them an opportunity to reform if, in the opinion of the Board, the attitude of the inmate and his response to training programs within the institution provide a reasonable expectation that he is sincere in his intention to reform and merits the opportunity to return to the community before the expiry of his sentence.

IV—PROCEDURES PRECEDING BOARD DECISION

The decision of the Board to grant parole is not taken lightly. The Board recognizes the gravity of this decision and the serious consequences which may follow if a person released on parole turns once again to criminal activity. A great deal of careful preparation is made to obtain information and opinions which will assist the Board in arriving at its decision.

Case preparation encompasses all activity prior to the inmate's release on parole or mandatory supervision. It includes the gathering of reports from several sources, interviews, analysis of all pertinent data available and a summary and recommendation for consideration by the Board.

Case preparation procedures vary for cases of inmates serving penitentiary sentences and those serving sentences in other prisons. This presentation will therefore deal first with the procedures in penitentiary cases, following which the differences between the two will be stated.

Penitentiary Cases

A case file is opened in the district office and at headquarters upon receipt of the penitentiary admission document. The identifying information on this form enables us to initiate our requests for reports that do not come to us automatically.

The R.C.M. Police Fingerprint Section record is forwarded to us automatically by that force in each case. This document gives a history of the individual's criminal record.

Certain police forces supply us automatically with reports outlining the circumstances of the offence and other details surrounding the commission of the offence. In all other cases, we request reports from the investigating force. The Board places great stress on having an official version of the offence. The necessity for police reports becomes clear when it is realized that the inmate (like all humans) generally wishes to place himself in the best possible light and is therefore likely to repress certain of the facts surrounding the commission of the offence.

It is a well known fact that police forces will, from time to time, express their displeasure with the activities of the Parole Board. It should be made clear, however, that this fact in no way detracts from the further fact that the reports of individual police officers written with respect to individual offenders are remarkable in their objectivity.

Certain types of cases involve additional enquiries. For example, in cases involving drugs, we request a report from the Division of Narcotic Control, Department of National Health and Welfare and enquiries are made of the Department of Manpower and Immigration with respect to the citizenship status of individuals who may be deportable. Pre-sentence reports are available to us in those cases in which they have been conducted by the provincial probation services.

The inmate is advised in writing of his parole eligibility date and if interested in parole, he is invited to forward his application five months in advance of that date (nine months in advance in life sentences).

Receipt of the inmate's application initiates additional reports by the institutional staff. (At this point, however, we already have on file a social history report from the institution which was completed shortly after admission.) The report at the time of the inmate's application is, in large measure, drawn up by institutional classification officers, but it incorporates reports or comments from staff members who are in frequent contact with the inmate. Depending on the nature of the case, there may be reports from either a psychiatrist, a psychologist, or both. Essentially, the institutional reports tell us of his attitudes, what the inmate has accomplished in the institution, what he has achieved during his sentence by way of training, treatment, etc.

Following receipt of this report, the representative of the Parole Board interviews the inmate. During this interview, the inmate's release plans are discussed in depth, contacts will frequently be made with institutional personnel for additional information and clarification, and in certain cases, a case conference may be held with institutional personnel.

Once the assessment of the individual is completed, the district representative will direct a request for a community assessment. Each district representative is responsible for community assessments within his own district boundaries. Consequently, the file, with appropriate referral material (copies of the various interview reports indicated above), is directed to the office of destination, as required. This office will either complete the investigation or refer the case to the appropriate provincial or private after-care agency in their district.

The purpose of the community assessment is to make in-depth enquiries in the community to determine that aspect of the feasibility of releasing the inmate on parole. The investigation determines the attitude of the family and the community in general toward the applicant. It confirms the inmate's stated release plans in terms of offers of employment, where he intends to live and the willingness of the family and community to assist the applicant with his rehabilitation plans. While the emphasis is on the immediate family constellation, corollary interviews may be held with other relatives, potential employers, police, etc.

Essentially, there are two assessments made. The first of these is the assessment of the man in the institution and the second is the assessment of the adequacy of the community resources to receive him. Changes in the community situation often necessitate a further interview by the parole officer and occasionally, this results in a completely new release plan being formulated. This information is normally available in Ottawa to the Panel Members of the Board who will eventually interview the inmate in the institution.

The panel hearings take place either one or two months in advance of the inmate's eligibility. At the time of the Panel hearing, the institutional officer and the parole officer who interviewed the inmate are present and are able, at that time, to present the Board with up-to-date information about the inmate's situation and plans.

Prior to cases being presented to the Board for review at headquarters, there is a review by the headquarters staff to ensure the presence and adequacy of all material required for the Board review. A Special Categories Section carries out an intensive review with respect to a selected category of cases. These cases include Dangerous Sexual Offenders, Habitual Criminals, Doukhobors, Life cases and any other case designated as "special".

Because of the nature of the cases, the procedures in processing them in the district offices are more elaborate. Before recommending for parole, there are normally case conferences involving the institutional psychiatrist, psychologist, classification officer, a representative of the National Parole Service and other institution officials, i.e., the prison chaplain and training officers who are in daily

contact with the inmate and who are aware of his daily progress in the institution.

Should the case conference decide that further psychiatric opinions are necessary, this is done by bringing together a panel of "outside" psychiatrists for a more comprehensive and independent evaluation. Should it be decided that further treatment is indicated or that a change to a different environment seems necessary, these arrangements are made. The change of environment may be to a hospital or clinic where specialized programs are carried on or the inmate could be moved to a different type of security institution where his rehabilitation would be enhanced.

If progress in the institution appears favourable, an intensive community enquiry is carried out to determine the readiness of the community to receive him.

Following upon positive reports from the institution and from the community investigation, a comprehensive report is prepared by a parole officer. He will summarize all reports on file, discussing the nature of the offence, the findings of the psychiatrists and penitentiary officials, the treatment carried out and the inmate's adjustment to the institution. He will discuss the inmate's present attitudes in terms of the offence and future plans in the event of parole. All of the strengths and weaknesses of the case are discussed and a recommendation is made to the Board. The Board may or may not reach an immediate decision. They may require further clarification of some issue or an elaboration of a particular report. When all issues of the case are covered to the satisfaction of the Board, it is then in a position to make a definitive decision.

Prison Cases

The procedures that are carried out in penitentiary cases are carried out in prison cases with the following variations:

1. A file is opened upon receipt of an application from the inmate or by someone on his behalf. Together with the inmate's application, the institution forwards a document similar to the admission document which contains the information necessary for us to begin our basic enquiries.
2. No automatic features exist and, therefore, all our reports are requested.
3. The Board Panels do not visit provincial institutions and, therefore, the Board decision is made at headquarters in Ottawa.

V—SUPERVISION OF PERSONS ON PAROLE

A major concern of the Board is the protection of society. We are confident that a system of parole, whereby persons are released under a degree of supervision and control with clearly stated conditions which they must recognize and observe, offers a better protection than unconditional release at the termination of sentence. In all the contacts which the officers of the Board have with the prisoners in the institutions, they encourage them to think in terms of reform and self-improvement and to plan realistic, attainable programs for their future, whenever they are released. If they are granted parole, the officers

of the Board are available not only to enforce the observance of stipulated conditions and to maintain supervision but also to provide guidance and counsel to the parolee and to his family. Supervision of the parolee therefore becomes a further step in the process aimed at treatment and rehabilitation of the offender.

At November 30, 1971 there were 5,479 persons on parole in Canada. Officers of the National Parole Service supervised 3,162 and the balance, 2,317, were supervised by after-care agencies, provincial welfare or correctional services and private citizens who volunteered their services.

When individuals are released on parole, it is our responsibility to help them in every way possible to become law-abiding and productive citizens. The majority of parolees are supervised on a one to one basis; this means that usually each person is seen individually by a supervisor who utilizes the case-work technique. In recent years, however, some other techniques of supervision have been developed, such as the ones utilizing group dynamics. Some specialized group-therapy programs have also been organized on an experimental basis in a few of our offices. Up to now, the results have been quite promising. Other special techniques, e.g., Alcoholics Anonymous, are being utilized. In the course of supervision, we will frequently utilize the services of many professionals and community resources if there are special needs.

Experience shows that the first six months on parole is the most difficult and trying period. This is the time when a good number of parolees encounter their more serious problems and crises in re-adapting to a satisfactory way of life. Because of this, our supervision is more intensive and our contacts are much closer during the first months on parole. We do not want, however, to create dependence. Our ultimate aim is to see these persons accept their own responsibilities.

There are three main aspects in the supervision of parolees which, it is believed, will influence the successful outcome. They are:

1. Service and Assistance
2. Treatment and Support
3. Control and Surveillance

Service and Assistance

The aspect of service and assistance is the one where the material needs of the parolees are evaluated and adequate action taken. Very often they have problems and difficulty in finding employment because of their criminal record. They will be refused employment because they cannot obtain security bonding or employers do not want to hire persons with criminal records. They need assistance from different sources. The supervisor gives practical help in these instances and in so doing he will be able to establish a good relationship. Whenever this has been accomplished, the chances of a successful outcome of the case become greater.

Treatment and Support

This is the most important aspect of supervision where-by professional techniques are utilized, and an analysis of

the personality problems is made. Assistance is given to overcome difficulties of adaption, methods and means of solving crisis situations are shown. Support is given and ways suggested to assist parolees to accept frustration and cope with personal problems without resorting to anti-social action.

Control or Surveillance

The parolee knows that he has been released conditionally, that he has to follow rules and regulations. He is periodically reminded of what is expected of him and the consequences that will likely follow should he not live up to the conditions of his certificate of parole. In the majority of cases, the parolees are required to report regularly to the local police department. In some cases, where it is not deemed necessary or might even be detrimental, this condition is not imposed. When supervising parolees, it is, of course, not possible to follow them twenty-four hours a day. They must learn to be on their own eventually since, in the great majority of cases, parole lasts only a few months and, sooner or later, these persons will not be supervised and will have to make their own decisions and resist the temptations that they may have later on of committing other crimes.

If possible, parolees are visited at work, provided their employers are aware of the fact that they are on parole. Contacts are kept with the families or with other persons interested in them.

If, after trying everything possible to help a parolee, he does not respond, refuses to co-operate or will not observe the conditions of parole, the district representative has the authority to suspend the certificate of parole and issue warrants of apprehension and committal to have the parolee returned to prison. District representatives have the authority to lift such suspensions of parole and order release of the suspended parolee within fourteen days. Otherwise, the case must be reviewed by the Board and either the suspension is lifted by the Board and the parolee is given another chance, after having been warned, or the parole is revoked. In 1970, 312 paroles were revoked because it was found those persons were not following the conditions of their paroles and it was feared that they would commit further crimes.

Finally, if a parolee is found guilty of an indictable offence while on parole, this results in an automatic forfeiture of the parole and this person is returned to custody to serve the remanet of his sentence, i.e., the portion of his sentence which remained at the time he was released on parole plus any new sentence. In 1970 we had approximately 922 forfeitures.

When parolees are supervised by other agencies, the Parole Service retains the same important responsibilities and authority in these cases. Reports relating to the actions and progress of parolees are forwarded to our offices by their supervisors. These reports are evaluated and analyzed. If there are problems, these are discussed with the supervisors and appropriate decisions are taken. Corrective action may include official warnings or disciplinary interviews by the district representative or even suspension of the parole. The district representative also retains the authority to grant or withhold permission for

the parolee to travel to other districts, enter into contracts, or make other important changes in his way of life.

VI—PAROLE EXPERIENCE IN CANADA

The Parole Board feels that it may take justifiable pride in its accomplishments to date. In the first 151 months of our operation, we granted parole to 37,710 inmates and during that time we have had to return to prison about 5,000, of which some 3,000 committed indictable offences and forfeited their parole, and 2,000 had parole revoked because they failed the conditions of their parole or committed some minor offence. This means that on the average, for the first 12 years and 9 months of our operation, 87% of persons on parole completed their parole satisfactorily without reverting to crime.

In 1963-64 the Board granted only about 1,800 paroles. At that time the average failure rate was about 10% and we were paroling only 29% of those who applied. Since that time we have been able to recruit more staff and, since the failure rate was so low, we deliberately increased the use of parole. In 1970 we paroled 5,800, or 67% of those who applied. Naturally since there was such a substantial increase in parole, the failure rate also increased, so that at the present time it is running at about 25%.

This record compares very favourably with results in a number of jurisdictions in the United States. Research records of the National Council on Crime and Delinquency, published in December 1970, report on a review of 8 different parole boards. A study which included 1,766 parolees recorded no forfeitures or revocations in the case of 1,146, for an average failure rate of 35%. In a study which included 24 parole boards, it was established that failure rates were as high as 58%.

In 1970 the United States federal Parole Board, which is responsible for adult parole in U.S. federal prisons, granted parole to 45% of those who applied. The recorded failure rate for persons on parole during 1970 was 28.5%. In the same year the National Parole Board in Canada granted parole to 67% of those who applied and recorded a failure rate of only 17%, including revocations and forfeitures.

We recognize that it is extremely difficult to make precise comparisons because all of the factors used as a basis for statistical studies are not always identical. From studies which have been conducted and discussions with representatives of parole boards in Britain and the United States, we are confident that the record of Canada's parole system compares favourably with that of systems in those countries.

Economic Considerations

We believe that parole is not only an effective means of helping and rehabilitating prisoners and making them useful productive citizens, but it also achieves a very considerable saving of expense to the taxpayer.

It costs anywhere from \$7,000 to \$10,000 to keep a man in prison for one year, and this does not take into account the cost of maintaining his family on welfare, which could be another \$2,000 or \$3,000 a year. If he is on parole, and

employed, he can support his family, and is thus contributing to the economy of the country as a taxpayer rather than a tax burden.

In a study which we did last June of 2,663 persons on parole, we found that 2,078 or 78% were working. Their average income was \$412.00 for the month and their gross income was nearly \$857,000.00. The 2,621 men and 42 women in this survey supported 2,279 dependents. Altogether, there were over 5,257 persons on parole on June 30. Assuming that an equal proportion of the other 2,500 or so were working, we can reasonably project total yearly earnings of persons on parole in Canada at approximately \$12,000,000.00.

This is money which is going into the economy of the country which would not be going into the economy otherwise, if these people were kept in prison. At the same time, we are saving the cost of their incarceration.

Publicity and Public Relations

In any parole system there are bound to be failures. Unfortunately, parole failures receive much more publicity than do the 75% or so who succeed and are rehabilitated. If there were very few failures, it would probably mean that the Parole board is too rigid in the application of criteria and overly selective. The result would be that many persons who have a reasonable expectation to reform would remain in prison. We would simply be missing the opportunity of helping those who need it and who are going to come out of prison sooner or later, whether we like it or not.

We realize that the public is properly concerned when someone on parole commits another crime. There have also been cases where this has had tragic results. It should be pointed out, however, that accounts of crimes committed by persons parole have not infrequently been in error. In some cases, these reports refer to persons released from prison at the termination of a sentence or who are at large through legislation other than the Parole Act.

We are using all the means at our disposal to inform the public by use of the media, through meetings of our officers with the public, and by the publication of reports to give factual data on the results of the activities of the Parole Board. We do not, of course, jeopardize the possible rehabilitation of parolees through public disclosure either of their identity or of the circumstances related to a case. Parolees are at liberty to discuss these facts themselves and increasingly numbers of them do come forward in response to general invitations to discuss the problems of rehabilitation and corrections at congresses and meetings of criminologists.

The Parole Board feels that it has nothing to conceal in its objectives or activities. Our officers are encouraged to seek opportunities to give information to the public in order to convey a better understanding and enlist support of our efforts.

VII—RESOURCES AND MEANS AVAILABLE TO THE BOARD

The Board is supported by a parole staff composed of social workers, criminologists, psychologists and other

professionally trained officers. They assist the Board in carrying out its responsibilities by maintaining liaison with other departments and agencies in the correctional field and in other areas of mutual interest and concern.

The headquarters of the Parole Board is at Ottawa. The staff of the Board, at the headquarters, plans and implements the program of the Board and provides managerial and support services to the organization enabling it to carry out its tasks and objectives.

The Board has established thirty-four offices which are located at centres calculated to provide the widest possible service to the total population. The following is a listing of the location of district offices by region:

Atlantic Provinces

St. John's, Nfld.
Halifax, N.S.
Truro, N.S.
Sydney, N.S.
Moncton, N.B.
Saint John, N.B.

Hamilton
London
Windsor
Sudbury
Thunder Bay

Quebec

Montreal
St. Jérôme
Laval
Quebec
Chicoutimi
Rimouski
Granby

British Columbia & Yukon Territory

Vancouver, B.C.
Victoria, B.C.
Prince George, B.C.
Abbotsford, B.C.

Ontario

Ottawa
Kingston
Peterborough
Toronto
Guelph

Prairie Provinces & North West Territories

Winnipeg, Man.
Brandon, Man.
Regina, Sask.
Saskatoon, Sask.
Prince Albert, Sask.
Edmonton, Alta.
Calgary, Alta.

Parole officers visit penal institutions, conduct interviews with inmates, arrange community investigations and enquiries to establish probable success of parole. They arrange for supervision of paroled inmates, interview employers and representatives of community organizations to promote acceptance of paroled inmates. They prepare reports and recommendations to the Board on applicants for parole and report on progress of paroled inmates.

The Parole Board obtains a great deal of assistance as was indicated earlier from provincial departments of corrections and welfare in several provinces, from private after-care agencies and from individual citizens who volunteer their services. The Board also obtains support and assistance from organizations operating half-way houses and other residential facilities.

The assistance provided by these organizations and the private after-care agencies was recognized by providing them with financial grants which partially covered their operating costs. The Department of the Solicitor General

recognized, in 1970, that the system of grants was inadequate and that a more equitable method of providing financial assistance to the agencies was required. As a result, Memoranda of Agreement were designed whereby a mutually acceptable fee for service basis has been substituted for the former system of grants. These Agreements are re-negotiated annually and appear to have provided us with a workable and acceptable system whereby we can utilize and extend services made available by private and provincial agencies. In the 1971-72 fiscal year, payments to agencies will total some \$800,000.00. A listing of the agencies which have entered into Agreements with the Department to provide services to the National Parole Board is included as an appendix.

VIII—CO-ORDINATION OF PROGRAM WITH OTHER AGENCIES

The Parole Board not only works in close collaboration with provincial departments and agencies and with private after-care agencies but also with a wide variety of other federal and provincial departments and with agencies at the local level.

We maintain, at all times, a close liaison with police forces. District representatives of the Parole Board have been requested to arrange meetings with chiefs of police in order to further develop and improve our communications and co-operation with the law-enforcement agencies.

It has been noted above that we are assisted by provincial and private agencies who conduct community investigations, prepare assessments of the situation and supervise parolees. There is a continuing exchange of information between officers of the Parole Service and these agencies. This interchange includes not only routine reports but direct consultation and case conferences.

The co-ordination of activities aimed at developing treatment and training programs to assist the rehabilitation of inmates is being rapidly intensified. The Penitentiary Service has undertaken to prepare parts of the reports which form the submission to the Parole Board. In 1970, we entered into an agreement with the Penitentiary Service whereby parole officers at the Edmonton and Calgary offices in Alberta interview all persons sentenced by the courts in that province to 2 years or more. Using a set of criteria developed jointly by our two Services, the parole officer determines whether the convicted person is to be directed to the maximum security penitentiary at Prince Albert or the medium security institution at Drumheller. This early involvement by the parole officer gives our Service and the Penitentiary Service accurate detailed information which is helpful in planning a suitable training program in the institution and in long-range planning for possible release on parole. This program has proved so satisfactory that we are now proposing to extend the procedure to the Atlantic Provinces and to Saskatchewan and Manitoba as soon as arrangements, which are currently under discussion, can be completed.

District representatives maintain continuing and close relationships with welfare departments, municipal welfare services, organizations which operate half-way houses, Manpower centres, service clubs and a host of other agencies and organizations.

We recognize that successful rehabilitation of criminal offenders is a highly complex problem which involves many facets of community life. We are, therefore, attempting to interest and involve all the community agencies which can play a significant part in assisting in the re-integration of the offender.

IX—NEW PROGRAMS

Today, we live in what has been called the post-industrial or technetronic society, a society in which rapid change is almost taken for granted. But whatever it may be called, the nomenclature clearly indicates a change from traditional patterns. Traditional ways of action are being questioned, altered, or discarded, and rightly or wrongly, traditional values are at stake. While this change has brought benefits, such as a much needed liberalization of certain social values, it has also laid a number of problems at our doorstep. Not the least of these is what appears to be a widespread disregard for traditional concepts of law and order and recourse to violence as a means of attaining both legitimate and unlawful ends.

Crime is not a phenomenon peculiar to our time. Nor is all crime directly related to the pressures caused by change; for assault, robbery, and murder have always been a part of man's history. An individual who has a record of drinking and committing offences is certainly not news. But the number of people who are locked into that pattern indicates to us the reaction both to the traditional and to the emerging problems facing our society.

The origins of many offences can be traced to an unfortunate early life, in an inadequate social and economic environment. They may also be traced to the tendency towards a breakdown in the roles once played by the family, the school, the church and the neighbourhood. But drug abuses, political kidnappings, aircraft hi-jackings, fraud, and misleading practices cannot be entirely accounted for through the explanation of broken homes, poverty, or mental illness. What are the problems, what are the solutions? We cannot fully answer either of these questions yet and I certainly do not intend to offer you a panacea for the cause and the increase in crime.

The Parole Board is conscious of the need to improve on present methods and techniques and to seek new ways of dealing more effectively with the interlocking problems of correction and rehabilitation of persons who commit criminal acts. A number of new projects have been implemented or are in the process of development. It is expected that these will contribute to the overall program and help us to make further progress and improve the results.

Mandatory Supervision

This is a new provision in the Parole Act which applies to persons who were sentenced to, or transferred to federal penitentiaries after August 1st, 1970. It provides that such persons on their release will be subject to supervision under authority of the parole Board for the combined total of the statutory and earned remission standing to their credit where this is sixty days or more. The person subject to mandatory supervision will be in the same position as a paroled inmate in respect of the suspension, revocation and forfeiture of parole.

This new provision of the Act is based on the view that if a person selected for parole requires counselling and supervision, those persons who are not so selected need such counselling and supervision even more. It is the intention of the Parole Board to provide to persons released under mandatory supervision the same level of support, counselling and assistance as is available to persons on parole.

This expansion of our program has not had an appreciable impact on the workload of the staff to the present beyond activities which our officers have undertaken in the institutions to explain the conditions and prepare inmates who anticipate release under these provisions early in the new year. Commencing in January 1972, it is estimated that some seventy persons will be released from the federal penitentiaries under mandatory supervision each month. Since we now parole approximately 3,000 from the penitentiaries each year, representing about 50% of the total population, the cumulative effect of mandatory supervision will be to increase the total number of persons under the authority of the Parole Board by about 3,000. This will represent a very substantial increase to the total workload of the Parole Service.

Temporary or Day Parole

One of the most promising developments in the last few years is an expanded use of what is known as temporary or day parole. This is simply an arrangement whereby a prisoner can be released from the prison in the morning, returning at night or for several days returning to the prison on weekends or by other special arrangements.

This type of parole is employed for two main purposes:

1. It can serve to allow continuity of employment or education, where disproportionately serious consequences would result, such as loss of long-term employment, or loss of a year of studies through inability to complete a term or write examinations.
2. Temporary parole is also used as a preconditioning for full parole and is frequently employed to test an inmate's ability to function in society and assist his re-integration by employment, attendance at retraining courses, etc.

Since persons on temporary or day parole are kept in very close control by the fact that they must report back to the prison at night or for weekends, parole failures in these circumstances are few and persons released in this way can easily be returned to prison if they are unwilling to abide by the conditions under which they are released. In 1970, the Board granted over 700 temporary and day paroles. This year, it is expected that the number will exceed 1,300.

Several provinces have established work release programs for employment and retraining of persons incarcerated in provincial institutions. They are able to do this under the provisions of the Prisons and Reformatories Act. These programs appear to be highly successful. There is a close collaboration between the provincial authorities and the Parole Board, since temporary release under a provincial program is frequently followed by parole.

Research and Pilot Projects

A research project has been jointly sponsored by the Penitentiary Service and the Parole Service to establish

a diagnostic and treatment plan on an ability study basis which will closely integrate the activities of both our agencies in planning and carrying through the program aimed at effective planning, treatment and supervision of a selected group from the time of their sentencing to discharge from parole.

Officers of the Board are participating in a variety of community projects including development of residential facilities, training courses and programs in community colleges, retraining and employment projects, and participation in community councils of welfare and social service agencies.

In conclusion, I may say that all of our efforts and activities are based on the following premises:

1. Every person who is sentenced to prison and who gives a definite indication of his intention to reform should be given the opportunity to return to society and accept his responsibilities as a law-abiding citizen. It is a matter of helping those who want to help themselves.
2. Unless an inmate is serving a sentence of life imprisonment, he will be released sooner or later whether we like it or not. It is surely much more desirable for all concerned, and the public is better protected if he comes out of prison on parole because he is under control and can be assisted with his problems, and he is also on parole for his remission time, which is one third of his sentence.
3. Society is better protected under a system of parole than otherwise. The prisoners are encouraged to think in terms of reform in order to obtain parole. They are then selected for parole because we think there is a reasonable chance that they will reform. Then, if they are released on parole they cannot easily return to crime whereas if they are released at the end of their sentence, there is nothing to stop them from returning to crime except the vigilance of the police.
4. The dual purpose of parole is the protection of the public and the rehabilitation of the offenders. We would not release a person on parole unless we thought there was a reasonable chance that he would reform and if we considered him to be dangerous, he would not be released at all.
5. The key to success in the treatment of criminals would be adequate control as soon as a person commits an offence, for as long as necessary, but no longer than necessary. Wherever possible or feasible, he should be kept in society and required to work, support his dependents and contribute to the economy of the country. If he cannot be properly controlled in society, then he must be placed in custody.
6. Since parole and probation are about 75% successful, there should be more treatment and control in the community than imprisonment which is often harmful and should be used only as a last resort and only for those who cannot be treated or controlled in any other way.
7. Rehabilitation of offenders is the surest means of protecting the public against recidivism. It is to everyone's advantage to encourage and help with this process.

The Parole Board hopes that we shall continue to merit the support of the public in our efforts to achieve these results.

PROVINCES AND AGENCIES WHICH HAVE ENTERED INTO AGREEMENTS TO ASSIST THE PAROLE BOARD

Provinces

Government of the Province of British Columbia.....	Victoria
Government of the Province of Alberta.....	Edmonton
Government of the Province of Saskatchewan....	Regina
Government of the Province of Manitoba.....	Winnipeg
Government of the Province of New Brunswick..	Fredericton
Government of the Province of Newfoundland....	St. John's

John Howard Societies

John Howard Society of Vancouver Island.....	Victoria
John Howard Society of British Columbia.....	Vancouver
John Howard Society of Alberta.....	Calgary
John Howard Society of Saskatchewan.....	Regina
John Howard & Elizabeth Fry Society of Manitoba.....	Winnipeg
John Howard Society of Ontario.....	Toronto
John Howard Society of Quebec, Inc.....	Montreal
John Howard Society of New Brunswick.....	Saint John
John Howard Society of Prince Edward Island...	Charlottetown
John Howard Society of Nova Scotia.....	Halifax
John Howard Society of Newfoundland.....	St. John's

Elizabeth Fry Societies

Elizabeth Fry Society of British Columbia.....	Vancouver
Elizabeth Fry Society of Kingston.....	Kingston
Elizabeth Fry Society of Ottawa.....	Ottawa
Elizabeth Fry Society of Toronto.....	Toronto

Residential

The X-Kalay Foundation Society.....	Vancouver
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Salvation Army

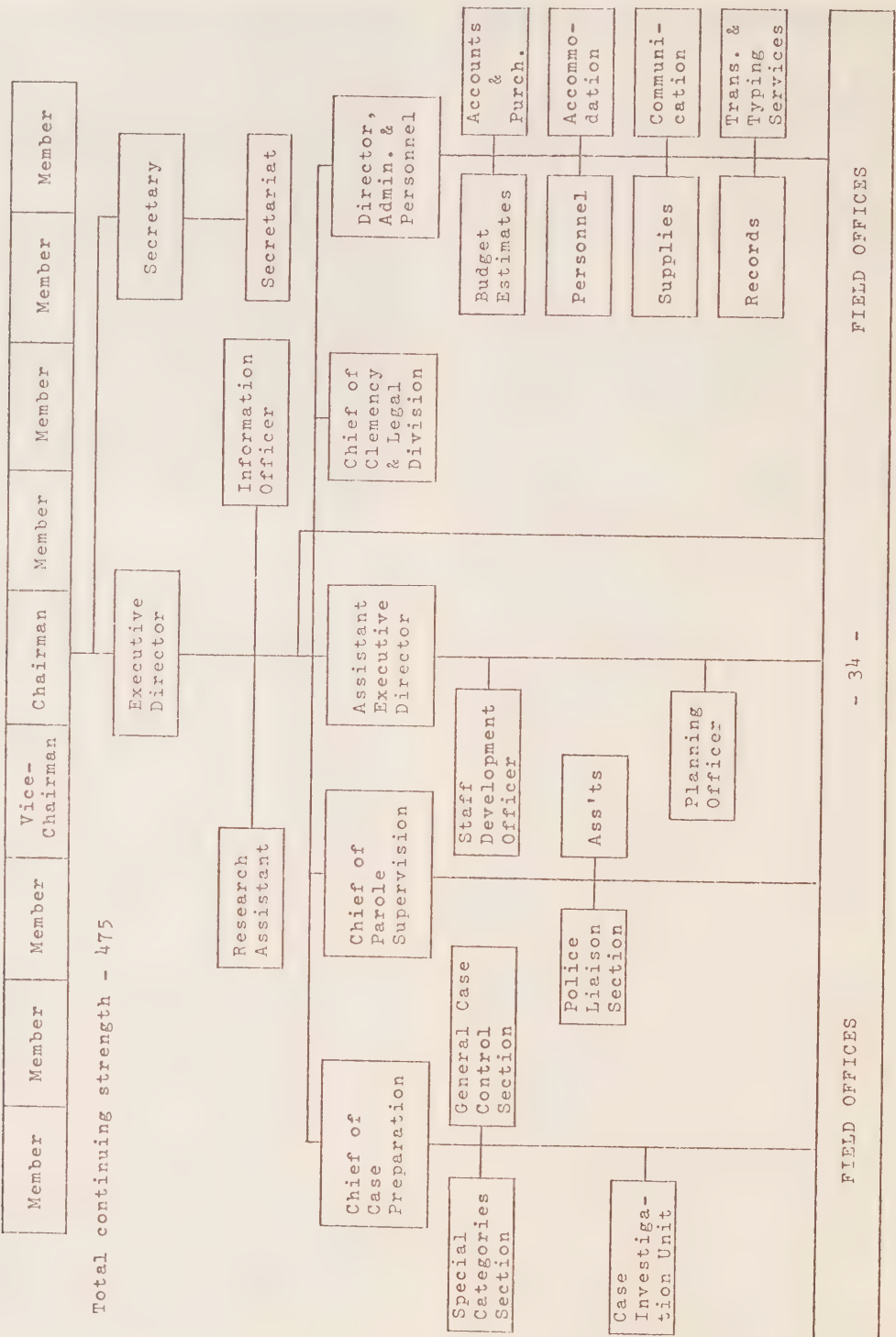
The Salvation Army of Canada.....	Toronto
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Social Services and Welfare Agencies of Quebec

Centre de Consultation Sociale (Rimouski) Qué...	Rimouski
La Corporation du Service Social de Joliette.....	Joliette
Le Service Social de Beauce.....	Montréal
Le Service Social du Centre du Québec.....	Nicolet
Le Service Social de l'Enfance et de la Famille...	La Pocatière
Le Service Social Familial Inc. (Métropolitain Sud)	Longueuil
Le Service Familial Richelieu-Yamaska Inc.....	St. Hyacinthe
Le Service Familial de la Rive-Sud.....	Lévis
Le Service Social de Gaspé.....	Gaspé
Le Service Social de la Mauricie, Qué.....	Trois-Rivières
Le Service Social du Comté de Mégantic.....	Thetford Mines
Le Service Social du Diocèse de Mont-Laurier...	Mont-Laurier
Le Service Social de l'Ouest Québécois, Inc.....	Amos
Le Service de Réadaptation Sociale Inc.....	Québec
Le Service Social Régional de Châteauguay.....	Châteauguay
Le Service Social de Ste-Germaine.....	Ste-Germaine
Le Service Social de Saguenay, Qué.....	Hauterive (Saguenay)
Le Service Social de la Région de Sherbrooke...	Sherbrooke
Le Service Social de Valleyfield.....	Valleyfield
Société d'Orientation et Réhabilitation Sociale de Montréal.....	Montréal

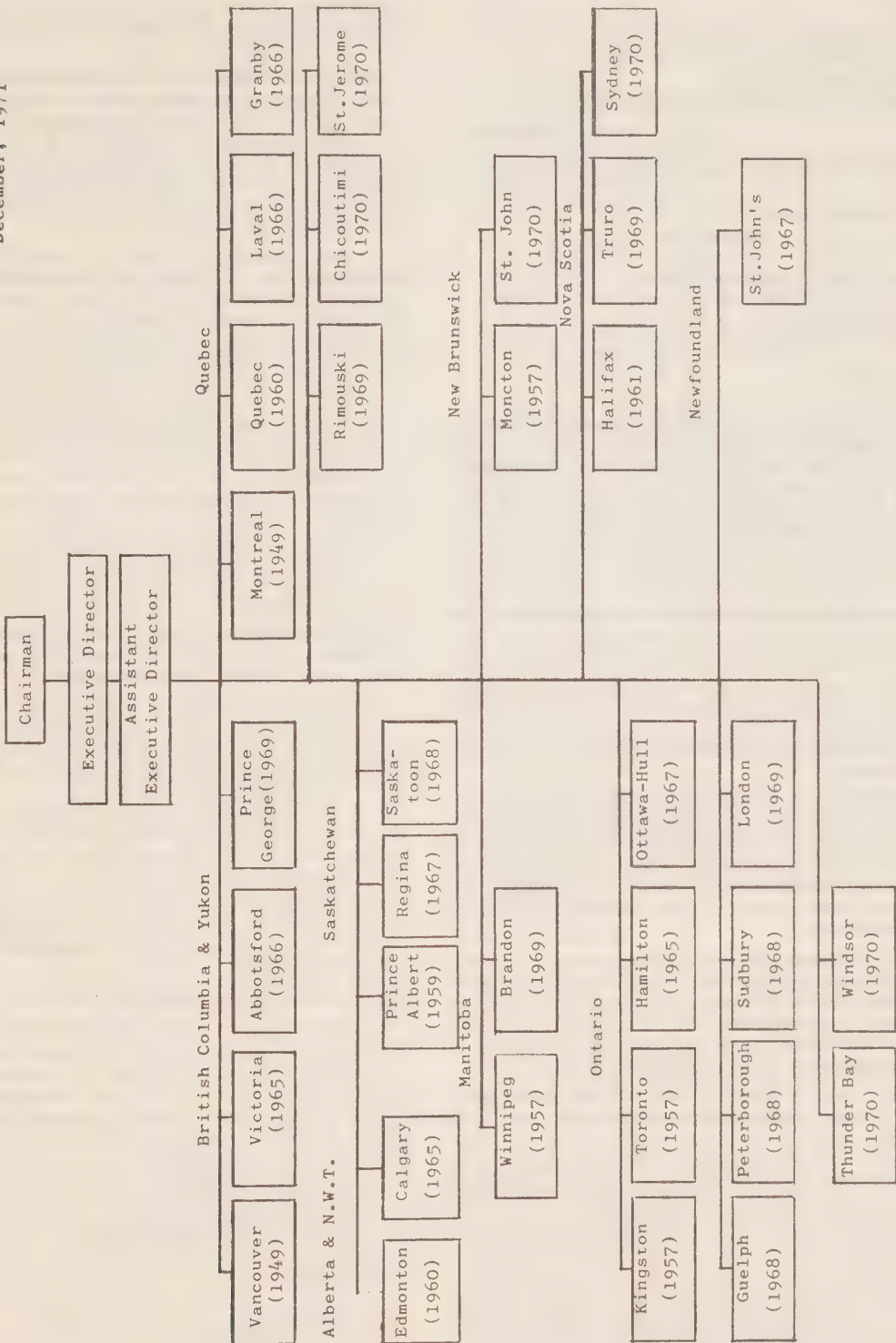
NATIONAL PAROLE BOARD - ORGANIZATION

December 10, 1971



National Parole Service - Field Organization

December, 1971



APPENDIX "B"

NATIONAL PAROLE BOARD

COMMISSION NATIONALE
DES LIBÉRATIONS CONDITIONNELLES

Ottawa 4, August 11, 1970.

MEMORANDUM TO ALL PAROLE SERVICE OFFICERS

(with copy to Board Members)

Re:

Exception from Regulatory Time
Rules Ordinarily Governing
Parole Eligibility
—our file No. 62298

I. INTRODUCTION

At a recent meeting, the Parole Board considered the question of exceptions to the time regulations. The Board endorsed the criteria set out in a memorandum brought to their attention by the Executive Director, as well as his proposal to give a directive to the staff. The Board expressed its concern that deserving cases not be overlooked, having in mind that the more articulate inmates are in a better position to argue the value of their cases as exceptions.

This memorandum then is intended as a reflection of the Board's policy and a directive for implementation of the policy.

Appropriate changes in the Operational Procedures Manual will follow in due course.

II. THE PERTINENT REGULATIONS AND THEIR IMPLICATIONS

(1) Parole Regulation 2(1)(a) specifies the arbitrary portion or arbitrary absolute minimum period of a sentence that shall ordinarily be served before parole may be granted. Where the Board feels "special circumstances" exist, however, Regulation 2(2) states that it may grant parole to an inmate before he has satisfied these arbitrary requirements.

(2) Regulation 3(3) provides for Board review at any time during a term of imprisonment. Therefore, an exception from the Regulations occurs only in the establishment of a date at which a release on parole may be effected prior to normal eligibility. Accordingly, no exception is involved in any of the following circumstances:—

(a) where a review date, by itself, is set earlier than ordinary parole eligibility (although it may lead to an exception);

(b) where a case is brought to Board attention in advance of a further review date it earlier established upon deferring consideration of parole;

(c) in the establishment of any review date following a revocation of parole.

(3) The Service has a responsibility to bring to Board attention cases which appear to offer "special circumstances", with a view to determining (a) if the Board wishes to make an exception from the time rules that

ordinarily govern parole eligibility, or (b) set an earlier review date to determine at that later time whether special circumstances exist.

(4) While Day Paroles are routinely effected before the ordinary eligibility date has been reached, this situation is not deemed to represent an exception. The processing of such applications, therefore, is not subject to the provisions of this directive. However, the absolute amount of time in custody and the proportion of the sentence served may be a factor in the consideration of Day Parole.

(5) Cases involving a sentence of death commuted to life imprisonment, or life as a minimum punishment, are not eligible for exceptional consideration under the Parole Regulations. Persons sentenced to life as a minimum punishment prior to January 4, 1968 (coming into force of new law in capital punishment) can be considered for an exception in the normal way. The only way in which a person subject to Cabinet authorization for parole could be released prior to ten years would be the extraordinary action of an Order in Council overriding the Parole Regulations.

(6) "Special circumstances" can never be precisely defined in advance. Any evaluation of what single factor, or combination of factors, in a particular case at a particular point in time may constitute "special circumstances" is of course a matter of individual discretion and judgment.

(7) A general principle is that no deserving case shall be allowed to suffer through rigid adherence to arbitrary time rules, where the best interests of the inmate and community would be served by this earlier release on parole. The case concerned should offer a unique justifiable ground which could not be contemplated by the Regulations. It is not, of course, the Board's duty to review the propriety of sentences.

(8) It is essential that every effort be made to avoid misunderstandings by the public or those responsible for the administration of justice in the event of the Board making an exception. It should be understood that the Board's action is not a response to subjective representations from any source but an exercise of its prerogative following an evaluation of "special circumstances".

III. GUIDELINES FOR SELECTION

(1) Over the years, individual cases have offered factors that have been considered to have sufficient significance to warrant the establishment of a release earlier than normal eligibility date. These have been categorized below for use as guidelines or yardsticks against which to assess circumstances in future cases to aid in determining whether they offer "special circumstances".

(a) *Clemency or Compassionate Grounds*

—death in family, involving close relationship and/or tragic or traumatic circumstances

—dependent suffering from cystic fibrosis or other debilitating ailment

—extraordinary hardship to dependent of inmate, more extensive and extreme than normally encountered

—birth of baby, either by female inmate or an inmate's wife

—Christmas, consistent with the spirit of executive clemency

(b) *Employment and School*

—release to accommodate deadlines, either school or reasonable employment, (e.g. maple sugar season, lobster fishing, etc.)

—to preserve a particular job, especially if physically handicapped

—inmate indispensable to employer for certain specialized duties

—inmate a student prior to short sentence, and his return to school expedited, especially where exams forthcoming

(c) *Preservation of Equity*

—meritorious service to administration, during institutional riot, etc.

—sentence being served in default of payment of fine, where non-payment results from genuine financial hardship

—time in custody prior to sentence

—changes in the law following conviction

—minimum mandatory sentences

—administrative inequity (e.g. two equally culpable accomplices, different judges, different dates of sentences, different sentences)

—accomplice released by exception for any reason but especially if relevant to present case also

—to provide identical eligibility dates for accomplices in light of information not available to the Court

—extenuating circumstances in the offence

(d) *Interdepartmental Co-operation*

—generally, to accommodate the reasonable needs of other government departments or agencies

—parole for deportation before a rarely obtained travel document expires, or to otherwise avoid embarrassment with foreign governments

—entry into special treatment programs (e.g. Special Narcotic Addiction Programmes, Indian Affairs Training Courses, etc.)

—transfer from adult to juvenile correctional institution, for reasons of treatment, by a special Certificate of Parole

(e) *Special Representation from the Judiciary, Crown Prosecutor, etc.*

—Judge advises that, upon reflection or in light of new information, the sentence should have been shorter

—Appeal Court dismisses appeal stating case should have early parole consideration

—Crown Prosecutor advises of unusual co-operation by inmate during investigation, etc.

—Judge or Crown Prosecutor recommends early consideration because a more culpable accomplice was acquitted on a legal technicality

(f) *Maximum Benefit Derived from Incarceration*

—lack of facilities for self-improvement within the institution

—deleterious effects anticipated from further incarceration

—low mental capacity limiting absorption of institutional programme

—age of offender, either youth or extreme age

—combination of inter-related factors (e.g. first offender, unsuitable institutional programme, universally favourable reports, receptive community, special offer of employment)

—ethnic cultural patterns or language at variance with those exercised institutionally

—the accidental offender

(2) This listing is not intended to offer any comprehensive statement of criteria. It is anticipated that in the future individual factors, or combination of factors, will arise that comprise "special circumstances" that are not mentioned above. While the factors are listed individually, one in itself will often not have proven sufficient to warrant an exception. A *combination of factors*, however, assessed within the context of all aspects of an individual case, may have been sufficient to "tip the scales" towards the granting of an exception.

(3) The length of the exception proposed should be examined in the light of the total sentence to determine that it represents a reasonable proportion, having in mind the grounds upon which it is based. The time factor is of obvious importance as to its weight on other factors. If the time to eligibility is only a matter of days or a few weeks at the most, all else being favourable, the existence of some urgent factor such as attendance at school or to meet a deadline for a job take on much more weight. Care should be exercised, of course, to prevent manipulation on the part of articulate and manipulative inmates who are not above contriving "urgent situations".

IV. PROCEDURE

(1) The Board may conduct a review at any time following imprisonment to determine if an exception should be made from the Regulations. It is not necessary for an application to have been received from, or on behalf of, an inmate. Accordingly, staff should be vigilant at all stages of case investigation and preparation to spot likely cases for such consideration.

(2) Headquarters staff are normally responsible for presenting to the Board cases that come to attention for consideration of an exception in the period *prior* to normal preparatory activity in a case with respect to the ordinarily established eligibility date. If considered necessary by the Parole Analyst, supportive information may be requested from the Field. *Field staff are, of course, free to and should draw deserving cases to attention.*

(3) The Field staff is responsible for presenting to the Board cases that come to attention for consideration of an exception *during* the period of normal preparatory

activity in a case with respect to the ordinarily established eligibility date.

(4) In some cases of penitentiary inmates, the consideration of a possible exception might require that the inmate appear before a division of the Board earlier than the normal schedule. In such cases action may be taken by the Field staff (or headquarters staff after consultation with the Field staff) to present a proposed action to advance the review date and appearance before the division of the Board.

(5) Summaries compiled for Board consideration of an exception should not be used as referral material to agencies for community enquiries.

(6) In any presentation in support of an exception, following a brief summary of the principal features of the case, staff shall state clearly:—

- (a) that they are recommending an exception;
- (b) the factors that motivate the recommendation;
- (c) why these factors, in their opinion, constitute "special circumstances" that would warrant an exception.

(7) All representations for an exception that are received shall be referred for Board review. Where the staff do not feel they could recommend favourably, it shall be clearly stated:—

- (a) that such representations have been received;
- (b) the origin and content of the representations;
- (c) why these factors, in their opinion, fail to constitute "special circumstances" that would warrant an exception.

(8) The Executive Director shall arrange to maintain a record of all such decisions and shall report from time to

time, giving an analysis of the special circumstances which moved the Board to authorize an exception.

V. FORMAT OF SERVICE RECOMMENDATION

(1) If a Service recommendation involves an exception, this fact should be clearly indicated. In the absence of such an indication, it is assumed that ordinary time rules will apply.

(2) The appropriate format would be in accordance with the following selected examples, which cover a number of possible circumstances:—

(a) "I recommend Parole, by exception, to be effective September 15, 1970."

(b) "I recommend Parole for Deportation by exception, to be effective September 15, 1970."

(c) "As a Proposed Action, I recommend that the Parole Eligibility Review Date be amended to March 15, 1971."

(d) "As a Proposed Action, I recommend that the Board review this case on March 15, 1971 to determine if grounds exist for an exception, and that this review be kept in confidence."

(3) Where an application for an exception has been received, and the Service is unable to recommend that such be made, the recommendation is:—

"I recommend that the Board take no action to vary the Parole Eligibility Review Date ordinarily set in this case."

F. P. Miller,
Executive Director,
National Parole Service.

APPENDIX "C"

NATIONAL PAROLE BOARD

Agency Contracts—Payment Record 1971

Private Agencies	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
John Howard Society												
Newfoundland.....	360	570	580	520	590	610	530	520	780	810	900	
New Brunswick.....	870	1,230	560	860	990	1,000	1,100	980	840	890	840	
Nova Scotia.....	2,060	1,940	2,210	2,640	2,530	2,960	2,220	2,910	2,590	2,910	3,400	
P.E.I.....	—	330	330	330	400	360	330	400	370	370	300	
Quebec.....	4,810	5,250	5,170	4,990	5,210	5,450	5,360	5,390	5,270	5,560	5,630	
Ontario.....	12,570	12,290	13,200	12,130	12,590	12,820	12,240	12,580	13,040	13,130	13,740	
Manitoba.....	2,390	2,300	2,800	2,780	2,930	2,780	3,330	3,000	4,120	3,110	3,450	
Saskatchewan.....	1,600	1,690	1,570	1,430	1,350	1,780	1,720	1,760	1,910	1,780	2,220	
Alberta.....	3,130	3,350	3,610	3,120	2,740	2,870	3,200	2,920	2,800	2,860	2,670	
British Columbia.....	330	1,390	1,330	1,750	1,640	1,910	1,800	1,880	2,040	2,730	2,450	
Vancouver Island.....	630	710	750	550	390	390	390	430	710	560	510	
J.H.S. OF CANADA.....	28,750	31,050	32,110	31,100	31,360	32,930	32,220	32,770	34,470	34,710	36,110	
Elizabeth Fry Society												
Ontario.....	340	300	300	300	300	300	340	300	370	430	450	
British Columbia.....	280	280	240	280	210	150	170	150	180	120	180	
EL. FRY—TOTAL.....	620	580	540	580	510	450	510	450	550	550	630	
Salvation Army												
Newfoundland.....	90	160	130	130	90	120	120	120	90	90	90	
Quebec.....	570	560	630	660	630	680	720	710	720	660	640	
Ontario.....	300	280	320	320	300	270	240	250	240	970	420	
Manitoba.....	2,530	2,420	2,730	2,280	2,520	2,100	2,110	2,020	2,250	1,860	1,700	
Saskatchewan.....	—	—	—	—	—	40	—	—	—	—	—	
Alberta.....	560	630	430	390	410	370	340	310	280	310	210	
British Columbia.....	90	120	160	120	120	270	150	180	180	180	240	
SALVATION ARMY—												
TOTAL.....	4,140	4,170	4,360	3,900	4,070	3,850	3,680	3,590	3,760	4,100	3,300	

NATIONAL PAROLE BOARD

Agency Contracts—Payment Record

Quebec Social Service Agencies	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Service Social de Quebec.....	9,600	9,860	9,920	9,280	9,280	9,700	9,840	9,470	10,600	10,680	111,30	
Service Familial de Quebec.....	30	70	60	60	30	30	30	30	30	—	—	
S.O.R.S. de (Quebec) Montreal	5,990	5,810	5,490	5,490	5,070	5,250	5,180	4,740	4,700	4,680	5,430	
La Corporation du Service	740	660	710	910	660	520	720	600	710	660	670	
d'Assistance de Joliette.....												
Service Communautaire de la												
Gatineau & des Laurentides,												
Mont Laurier.....	240	240	270	210	240	210	240	250	250	320	300	
Le Centre Socio-Familial	570	480	450	390	390	390	430	420	420	460	420	
Laurentian Inc.....												
TOTAL—Quebec.....	17,170	17,120	16,900	16,300	15,950	16,100	16,440	16,010	16,710	16,800	17,950	
<i>Other Private Agencies</i>												
<i>Other Private Agencies</i>												
Manitoba—Catholic Welfare												
Bureau.....	70	60	60	90	120	120	120	90	60	60	60	
Vancouver—X-Kalay.....	330	300	370	420	360	360	450	450	420	360	270	
B.C. Borstal Assoc.....	—	30	—	—	40	—	—	—	—	—	30	
TOTAL—Other.....	400	390	430	510	520	480	570	540	480	420	360	

NATIONAL PAROLE BOARD

Agency Dontracts—Payment Record 1971

PROVINCIAL AGENCIES	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
N.B. Probation Serv.....	3,475	3,612.50	3,800	2,287.50	2,700	2,562.50	2,800	2,525	3,250	2,862.50	2,975	
Manitoba Probation Serv.....	1,370	1,120.00	1,620	1,460.00	1,780	1,380.00	1,700	1,920	1,840	1,960	1,780	
Alberta Probation Serv.....	3,920	4,480.00	4,560	5,370.00	5,020	6,160.00	5,740	6,270	6,230	6,230	5,870	
B.C. Probation Serv.....	—	—	3,330	1,940.00	4,220	4,610.00	4,440	5,400	5,040	4,810	4,540	
N.W.T. Probation Serv.....	90	270.00	250	290.00	350	330.00	360	360	510	380	360	
Department of Social Serv. and Rehab. St. John's.....	—	—	—	—	200	1,460.00	1,550	1,470	1,340	1,220	1,200	
Department of Welfare, Saskatchewan.....	260	250.00	250	430.00	380	460.00	440	450	440	510	520	
Yukon Probation Serv.....	—	—	—	—	—	—	150	230	150	180	210	
TOTAL—PROVINCIAL AGENCIES.....	9,115	9,732.50	13,810	11,777.50	14,650	16,962.50	17,180	18,625	18,800	18,152.50	17,455	
GRAND TOTALS.....	60,195	63,042.50	68,150	64,167.50	67,060	70,772.50	70,600	71,985	74,770	74,732.50	75,805	

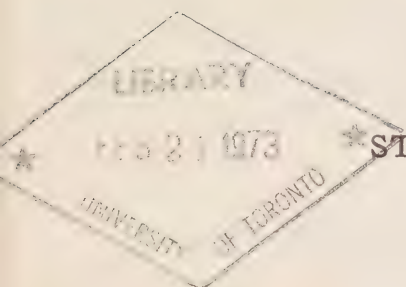
Last year of Grants \$165,000.00.
1971-72 estimated Costs \$800,000.00.



Fourth Session—Twenty-eighth Parliament

1972

THE SENATE OF CANADA



STANDING SENATE COMMITTEE

ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

I N D E X

OF PROCEEDINGS

(Issues Nos. 1 to 14 inclusive)

Prepared
by the
Reference Branch,
LIBRARY OF PARLIAMENT

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Government
Publication

FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

No. 1

WEDNESDAY, MARCH 1, 1972

Third Proceedings on the examination of the
parole system in Canada

(Witnesses—See Minutes of Proceedings)



STANDING SENATE COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue, H.	Hayden, S. A.
Buckwold, S. L.	Lair, K.
Burchill, G. P.	Lang, D.
Choquette, L.	Langlois, L.
Connolly, J. J. (<i>Ottawa West</i>)	Macdonald, J. M.
Croll, D. A.	*Martin, P.
Eudes, R.	McGrand, F. A.
Everett, D. D.	Prowse, J. H.
Fergusson, M. McQ.	Quart, J. D.
*Flynn, J.	Sullivan, J. A.
Fournier, S.	Thompson, A. E.
(<i>de Lanaudière</i>)	Walker, D. J.
Goldenberg, C.	White, G. S.
Gouin, L. M.	Williams, G.
Haig, J. C.	Willis, H. A.
Hastings, E. A.	Yuzyk, P.—30

*Ex officio members: Flynn and Martin.
(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, February 22, 1972:

With leave of the Senate,
The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, March 1, 1972.

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Prowse (*Chairman*), Buckwold, Burchill, Fergusson, Fournier (*de Lanaudière*), Haig, Hastings, McGrand, Thompson and Williams.—(10)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Patrick Doherty, Special Research Assistant.

On Motion of the Honourable Senator Hastings it was *Resolved* to print 1100 copies in English and 400 copies in French of all proceedings of this Committee during the Fourth Session of this Parliament.

The Committee proceeded to the examination of the parole system in Canada.

The following witnesses, representing the National Parole Board, were heard in explanation of the Committee's examination of the parole system in Canada:

Mr. T. George Street, Q.C., Chairman;
Mr. F. P. Miller, Executive Director;
Mr. B. K. Stevenson, Member;
Mr. M. Maccagno, Member.

The following were also present but were not heard:

Mr. W. F. Carabine, Chief, Case Preparation;
Mr. D. N. Parkinson, Information Officer;
Mr. J.P. Cardinal, Assistant Executive Director;
Mrs. M. Le Bleu, Secretary to the Chairman.

At 12:35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

N.B. There were two earlier proceedings relating to the examination of the parole system; they are Proceedings 11 and 12 of the Third Session.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, March 1, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, I propose that this morning we follow our usual procedure of completing our questioning on one aspect of the subject before turning to another, with all senators wishing to participate doing so.

Senator Hastings: I am advised by the clerk that we require a motion to print. Therefore, I move that 1,100 copies in English and 400 copies in French of the proceedings of the committee be printed.

The Chairman: I understand that we are likely to have a heavy demand for these. Shall the motion carry, honourable senators?

Hon. Senators: Carried.

Senator Hastings: Mr. Chairman, before proceeding I should like to welcome back Mr. Street, Mr. Stevenson Mr. Maccagno and the other representatives of the board.

You will recall that prior to the Christmas recess we had followed the case of a man through up to the point of the hearing, but we had not by then got him on parole. With that in mind, I should like to discuss with Mr. Street and the others present the matter of reserved decisions. I understand that there are two reasons for reserved decisions, incomplete documentation being one, and the fact that a decision may require the agreement of the complete board in Ottawa being the other. Are there any others?

Mr. T. G. Street, Q.C., Chairman, National Parole Board: This could also apply if the two members of the board did not agree. In that situation they would have no choice but to reserve the decision and bring the matter back to Ottawa to receive a majority decision. I do not think that such a situation could arise, but if it did it would lead to a reserved decision.

Senator Hastings: In what percentage of cases is there incomplete documentation?

Mr. B. K. Stevenson, Member, National Parole Board: That is difficult to answer because it varies from region to region. I would say that of the reserved decisions probably 75 or 80 per cent result from incomplete documentation. In such cases we might need a further report of some kind.

Senator Hastings: Is there any logical reason why the documentation cannot be completed in time for the hear-

ing, in view of the fact that you have five months' advance notice on an ordinary application for parole, and you have nine months' notice, I think it is, on capital offences?

Mr. Stevenson: I think the major reason is the heavy workload in the field of the officers who work month by month endeavouring to prepare cases. They try to interview as far ahead as possible. There are a few officers working far enough ahead who have everything available. As Mr. Street has indicated, we are dependent on outside agencies for assistance, and referrals to outside agencies sometimes take time and cause delays; or professional reports from psychiatrists and psychologists take time because of their heavy schedules.

Senator Hastings: In other words, you feel the nine months' notice is not sufficient in order to complete the documentation?

Mr. Stevenson: I am not certain about the nine-month period, if they start on the case well ahead of time. There are other cases with deadlines earlier than that. So, they work to the deadline. If a man on a life sentence—and I presume we are speaking about capital offences—is going to be eligible for parole in April, there are also fellows eligible in March, and their reports have to be prepared as well.

Senator Hastings: Do you have any recommendations or suggestions to make to this committee as to how this problem might be alleviated?

Mr. Stevenson: Well, of course, more staff is one answer and longer tenure for the staff. The longer they are on the job the more efficient they become in preparing cases. As I recall from my field experience, there was always a rush to get everything prepared and the reports in.

Senator Hastings: Would this be due to inadequate staff?

Mr. Stevenson: Yes.

Senator Hastings: With respect to the decision which you make after your visit to the institutions, do you feel it a worthwhile procedure to confront the man or woman concerned? Do you feel the interview is worthwhile?

Mr. Stevenson: Oh yes, very much so. I feel the crux of the whole parole process occurs at that point when those making the decision face the man and provide him the opportunity to say what is happening to him in the institution. I cannot say whether our decisions are any better or any worse than other decisions, but I know that there are many side benefits from this face-to-face meeting, such as our field staff working side by side and the institutional staff meeting us and participating in the discussion and, in

a sense, in the decision. Also at times even the inmates participate in the decision. I feel this is excellent.

Senator Hastings: Do you find giving your reasons for parole or denial of parole important?

Mr. Stevenson: Extremely important; when parole is granted it is very good.

Senator Hastings: To carry this forward, on reserved decisions or decisions made in Ottawa, is it not true that the inmate is not made aware of the reasons?

Mr. Stevenson: There are times when our communications break down because the decision is made at a later time. In most cases, however, or in as many cases as possible, the field officer receives the reasons. He then goes to the institution, interviews the inmate and interprets the reasons for him.

Senator Hastings: Did you say, "in most cases"?

Mr. Stevenson: In most cases. I know for a fact that in some cases it is not done.

Senator Hastings: I know that in many cases all the man receives is a letter from the Parole Board saying his parole has been denied and the institutional staff or the agency working with the person is unaware of the reason.

Mr. Stevenson: They can obtain it from the field staff. Again, because of the work load, I think they do not always go out for the second interview after the decision has been made, but I know that in many offices they do make a point of seeing the person to ensure that he understands why the decision was reached.

Senator Hastings: Mr. Stevenson, how do you feel about the veto power which is granted the Solicitor General of the Province of Quebec?

Mr. Street: There is no such veto power.

Senator Hastings: Did I not understand you correctly that on your terms of five years or more—

Mr. Street: They have an opportunity to make representations to us. The reason for this is to ensure that no person involved in organized crime slips through without our knowing it, because if he is involved in organized crime, or the Mafia, it would not necessarily show on our files. We give them the opportunity to make representations. However, there is no such veto power on the part of anyone concerned.

Senator Hastings: Would that apply to the Attorney General in Ontario?

Mr. Street: No.

Senator Hastings: This would only apply to the Province of Quebec?

Mr. Street: No, the Province of Quebec does not enjoy more privileges than any other province. Anyone can make representations. It occurred because of some difficult cases in Quebec, and they asked for the opportunity to make representations to the board. This is what happened in Quebec. I think it arose in connection with FLQ cases.

Senator Hastings: How long has this procedure been followed in the Province of Quebec?

Mr. Street: About six or seven years, I think.

Senator Hastings: Six or seven years, and before the FLQ—

Mr. Street: We had FLQ cases then, and I feel for this reason, the opportunity to make representations was then provided, if not the whole of the reason.

Senator Hastings: As you are aware, Mr. Street, I am concerned with the discrepancy in the treatment provided in the Province of Quebec, and I am wondering if there is not some correlation in that treatment—and I am not sure what you would call it—which you provide for the Solicitor General of the Province of Quebec.

Mr. Street: No, I do not feel there is any difference. Did we not send you some statistics? You have obtained more statistics than most other members have, and I thought we sent some statistics to you, but I am not sure.

Senator Hastings: I am just wondering why the Solicitor General of the Province of Quebec enjoys this procedure and no attorney general in any other province does?

Mr. Street: Anyone else can do this also if they wish to. Anyone can make representations to the board if they request to. They were concerned about the FLQ cases at the time and they wanted to ensure that no person involved in organized crime, especially on an international basis, was denied this opportunity. It would not necessarily show on our file if he was suspected of being involved in organized crime. We have the same arrangements with the Ontario Provincial Police and the R.C.M.P.

Senator Hastings: Is this recommendation not given to you on a mimeographed form at the time of the conviction?

Mr. Street: Is that the form letter they send to us? I do not think they send very many to us. They do not write to us very often, as I recall.

Mr. F. P. Miller, Executive Director, National Parole Board: If a sentence is for five years or more, they send us a letter in which they give us information. It is relatively short and it tends to be stereotyped. It is difficult to make short comments on quite a number of people in which there is not much differentiation between them. They express a view which goes on our file, the same as any other report which we request. Other attorneys general from time to time have made representations in particular situations. In the case of a group such as the Doukhobors in British Columbia, for example, the Attorney General of the Province made representations. In my opinion, it is not a matter of any special privilege being granted. They simply suggested that they wished to proceed in this routine manner and we, of course, would not prevent it. Their reports receive the same consideration as any others.

Senator Buckwold: Does the report from the province prejudice? In other words, do they state that in their opinion an individual should not be eligible for parole? Would the short report with regard to sentences over five years prejudice in so far as the possibility of parole is concerned?

Mr. Miller: Opinions are expressed as to how they feel the individual should be treated or as to the likelihood of his rehabilitation, in the same fashion as do the police, judges and a variety of other bodies which report to us.

Senator Buckwold: Would they recommend that no consideration be given for parole to a certain individual?

Mr. Miller: Yes, they would make such recommendations. They might also indicate that in their opinion the man could be paroled. If you wish to term it a privilege, it is exactly the same as that granted to anyone who wishes to communicate with us.

Senator Buckwold: Is more weight placed on such a recommendation from the provincial attorney general than on one from an ordinary individual?

Mr. Miller: I am not a member of the board, but was at one time. Consideration and weight are given to the opinion and the actual information and facts available as compared to other information at hand. A principle that has always been maintained throughout the history of parole in Canada is that the paroling authority is not bound by anyone's recommendation. Cases occur in which adverse recommendations are received and the decision is favourable. Reports may be received from two sources which are considered to be important opinions, one recommending one course and the other the opposite. It then becomes the function of the Parole Board staff to consider the reports in the light of their experience and to decide what weight they deserve.

Senator Buckwold: Could I summarize that by saying that in your opinion a letter from the Solicitor General of Quebec would be dealt with in much the same manner as any other letter? In other words, the influence of the Solicitor General of Quebec is not any different from that of anyone else?

Mr. Miller: I would say that his opinion would be given no undue weight.

Senator McGrand: You have made reference to the FLQ and the Doukhobors. There must be a distinction made between members of the FLQ, who are more or less political prisoners and the Doukhobors, who are detained because they refuse to conform to the Canadian law. You must give them different consideration from a criminal who has robbed a bank. The rehabilitation is entirely different, is it not?

Mr. Street: Yes. I did not mean to put them in exactly the same category, but to point out that they are special types of cases. As you say, the Doukhobors are not similar to ordinary, run-of-the-mill criminals. However, because of the extremely tense situation in British Columbia and all other provinces involved, we had special meetings with the police and the attorney general's department to consider these cases. It worked out very well, and most are now on parole. There has been one revocation, to my knowledge, in the case of a man who was charged with impaired driving or a similar offence.

Senator Williams: With regard to the Doukhobors, does the Parole Board give real consideration to the fact, that

they are not actually criminals but are possibly in some cases just as dangerous and are abnormal in their religious way of life, in that they are fanatics?

Mr. Street: We certainly do, and we spent years working on this.

Senator Williams: Do they receive the normal or average number of paroles, as compared to others?

Mr. Street: As you say, it was mostly caused by their rather strange religious conviction. I made a special trip to speak to them and the authorities in Grand Forks and other places in the area when the problem first arose. At that time I explained to them that if and when they decided to obey the law we would consider granting parole. They inquired whether the law was God's or man-made. I informed them that I was referring to man-made law and we parted company, because they were then only interested in God's law. However, one year later, after someone wrote a book and they had come to their senses and realized that they had been duped by their former leader, they indicated that they would obey the law. They were informed that they would have to demonstrate this, and they worked so hard in prison that there was insufficient employment for them. However, it was a very tense situation, one which required very careful consideration. Whether it was a religious conviction or a type of political conviction, we still had to consider that they were potentially dangerous.

Senator Thompson: Do you recognize any agency as having special knowledge that an inmate might be associated with an international organization such as the Mafia? Would their reports, therefore, receive particular consideration?

Mr. Street: Yes.

Mr. Thompson: What agency is that?

Mr. Street: The Royal Canadian Mounted Police, the Ontario Provincial Police, the Quebec Provincial Police, the Ontario Police Commission and the Quebec Police Commission. As you know, they maintain special sections dealing with Intelligence, as opposed to documented information. We receive from them reports based on Intelligence.

Senator Thompson: Might they not write through their attorneys-general?

Mr. Street: Well, they might, but I think the communication is more direct than that. They are invited to communicate with us at any time they wish.

Senator Thompson: Your answer to the effect that a letter from an attorney general would be given the same weight as one from any one else raised in my mind the question of the existence of an agency which you recognize as having particular knowledge regarding areas of crime and the danger of an inmate being released because of an association he may have with one of these organizations.

Mr. Street: Yes, but I do not remember ever seeing a letter from an attorney general in a case such as that. It is usually from police sources.

Senator Buckwold: At our last meeting we heard reference to the problems of staff, which has again arisen this morning. You indicated that you need more staff, and then made a rather interesting observation respecting longer tenure which means, I presume, that you experience a fairly rapid rate of turnover?

Mr. Stevenson: No, I am sorry; I was not implying that, senator. However, I found in my own experience that the longer staff members remain the more efficient they become.

Senator Buckwold: I gathered from your remarks that normally the tenure was not long enough. I should like to develop this aspect. Do you, in fact, have a rapid staff turnover? Do conditions, salaries, et cetera, make it difficult for you to obtain or keep staff?

Mr. Street: Perhaps Mr. Miller could answer that question. There is a rapid staff increase. We have a lot of new staff. I think that generally our tenure is quite long.

The Chairman: Once you get them, you keep them?

Mr. Street: Yes, we do.

Senator Buckwold: That clarifies my concern. Obviously, the staff situation will be of major concern to the committee.

Mr. Street: We are very lucky, senator, in that we represent the more pleasant and positive side of the work. We are able to recruit people more easily than, for instance, penitentiaries, because most people like to work with successful cases and inmates rather than in institutions. We do not have much loss of staff, but we have had a fairly rapid expansion in the last few years.

Senator Buckwold: Do you have any statistics of the number of your staff, say, over the last five years?

Mr. Street: I have some statistics for this year.

Senator Buckwold: If that information is not available, perhaps it could be provided. I am referring to the period of the past five years, to staff increases, type of staff, category of jobs, and the turnover of staff. We would be interested in receiving that.

The Chairman: I believe Mr. Street has some figures with him.

Mr. Street: The total establishment for this year is 475, of which 206 are officers in the field, regional or district officers. Two years ago the figure was 300, of which only 116 officers were in the field. There has been an increase therefore of about 90 officers. The number has almost doubled. We are doing this partly because of the increase in work, and to contend with mandatory supervision which is now coming into effect.

Senator Hastings: How many of those 80 or 90 are engaged on mandatory supervision?

Mr. Street: No one person is assigned to mandatory supervision, which is just barely starting. We estimate that about 30 persons a month will be coming out on mandatory supervision.

Senator Williams: Which province would have the greatest share of that 475?

Mr. Street: I am not sure if it would be British Columbia or Quebec. We would have to sort that out. I have the figures written down, but we would have to calculate that. British Columbia has five offices, but so also does Quebec and Ontario.

The Chairman: We will get that information, senator.

Senator Buckwold: Could I explore the manpower aspect a little further? I gather from what has been said that staff is a problem, yet, from statistics which have already been given us, we have seen a remarkable growth over the last two years. On the other hand, one might receive the impression that in spite of the almost doubling of the staff, the kind of progress that we would like to see in the system is not necessarily being achieved, particularly in dealing more rapidly and more thoroughly with cases. Is this question of staff the answer to the problem?

Mr. Street: The major part of it is, yes. However, there is in addition a rapid increase in the number of cases we are dealing with. In the first month of this year we dealt with 1,420 cases. In January a year ago the figure was only 1,027. Between this January and last, there was an increase, therefore of 400 cases in one month. That does not necessarily mean 400 people applying, but 400 different types of decisions which had to be made by the board in the month of January. The number of people who do not apply for parole is diminishing. In January of last year the figure was 55, but this year it was 41.

The Chairman: Those are people who have reached their parole eligibility date, but who have indicated that they were not interested in receiving parole?

Mr. Street: Yes. That applies to federal prisons only. Of course, that system will no longer apply, because we will now have mandatory supervision.

Senator Hastings: Have you given any consideration to using the RCMP for such purposes?

Mr. Street: No.

Senator Hastings: Have you found them helpful in the administration of the Criminal Records Act?

Mr. Street: I do not think they would want to do it, even if we wanted them to do so; they have enough to do.

Senator Thompson: I think it was Senator Buckwold who asked a question in connection with a young person in the penitentiary who asked for parole. It was found that community resources were not available. The person concerned had written to his family, but could not obtain a job. Unfortunately, neither could he obtain parole. In reading about that incident during the recess, I could not help thinking that we have in Canada an Immigration Department with branches across the country. People come here from Tibet, Czechoslovakia, and so on, and all these resources are available to help assimilate such people into the life of the community. When a question was asked about the relationship with unions, I was interested to learn that a parole officer said that he had seen one union leader himself, but that he did not know what was the

tie-up nationally. As I understand it, our immigration officers overseas are fed weekly information about job opportunities which exist across Canada. They know the requirements of unions both locally and nationally. To someone applying in Croatia or elsewhere for entry into Canada, an immigration officer can suggest that there might be a job available in, say, Moose Jaw. It seems to me that the whole weight of trying to obtain community resources is left to a few people. We have this resource of government, with offices all across the country. I am wondering how we can tie that in more closely with your service. Do you think it might be beneficial?

Mr. Street: Yes, it is indeed beneficial. I do not believe it happens very often, if ever, that a man is refused parole simply because he does not have a place to go to, or a job to go to. Sixty-eight per cent of our parolees are working and earning wages. The Manpower offices provide special placement officers whose concern it is, to help inmates or parolees find jobs. As I say, I do not believe many prospective parolees are turned down simply because they do not have a job to go to. As you yourself said, senator, there is usually work of some kind in some part of the country for a person who is willing to do it.

Senator Thompson: Let us take the Indian, for example. In answer to a question asked of you earlier, Mr. Street, I believe you explained to us that obtaining jobs for Indians is a particularly difficult situation. Now, I do not wish to single out any particular group, but we are quite successful in adopting other peoples in our country. My question, Mr. Street, is this: Are there particular efforts to look at areas across Canada to determine whether or not there are opportunities that a parolee or ex-inmate could go to? As it is now, there seems to be a pattern in that you always seem to want an individual to go back to his own community.

Mr. Street: I do not think it is fair to say we do that as such, but the prospective parolee is put in touch with a Manpower representative and can easily find out the job opportunities in various parts of the country. Most of them seem to want to go back to whence they came. The man is encouraged in every way to get a job on his own because then he will be happier, but he is given all the help we can possibly give him, through Manpower and through our own offices, to obtain a job.

I am not sure if that answers your question, senator.

Senator Thompson: Well, I am not too clear on this. Assuming I was an inmate of one of the penitentiaries, and I was soon to be released but had no job to go to, do I understand someone would come and interview me to determine my educational background, if any—and I would not have very much to offer—and I would then be put in touch with a Manpower representative? Now, do I write a letter, and, if so, where does it go to?

You see, I am thinking of the immigrant who is not aware of job opportunities, but the counsellor tells him that there are more opportunities in Ontario than in some other place and suggests that this might be the best place to go. The convict, I would think, has to figure out the best place to apply. For example, he has to think of whether he would not stand a better chance of being released if he said he was going home to live with his mother, or to get married, or something of that nature, whereas the real

opportunities for him could be in the Northwest Territories.

By simply writing to the local Manpower office I think his application would be simply filed without the type of interview which would disclose his background and, as well, make him aware of the opportunities across Canada. For example, an immigration officer sits down with a newly arrived person and outlines for him the various opportunities across Canada and, because he learns the background of the individual, he can direct him to certain areas in Canada where he might best succeed.

The Chairman: Why not simply ask Mr. Street how the prisoner finds a job?

Senator Thompson: Thank you Mr. Chairman.

Mr. Street: The prisoner is encouraged to find a job on his own, as he will then be much happier. He is, however, put in touch with a Manpower special placement officer who comes to the prison and obtains the type of information you were speaking about and, with this information on hand, tries to place the prisoner in a satisfactory job.

Did you want to add something, Mr. Stevenson?

Mr. Stevenson: I was going to say that a Manpower representative generally comes to penitentiaries and, I think, to jails on a regular basis to interview those who are either applying for parole or nearing the end of their sentence.

Senator Thompson: You say a Manpower representative usually comes—

Mr. Stevenson: I know a representative comes to the penitentiaries on a monthly basis in order to conduct interviews with those who request them. The prisoner's classification officer hopefully will have discussed employment and the whole post-release plan with the prisoner before this and will have suggested that he be put on the interview list for Manpower. I think the majority of the inmates obtain employment through relatives or friends, and they usually return to where they are most comfortable. Very few ex-inmates want to go to an entirely new area. I remember one fellow who wanted to go to Whitehorse in the Yukon Territory. He had been a miner in Sudbury and had a good employment record, so we agreed to reserve our decision on his request and seek a report from the Whitehorse probation department for his move. This individual's file was then sent to the probation department in Whitehorse who checked things out and finally agreed that he could go there. It was explained to this individual that Whitehorse in the winter was a difficult place to find work and fellows who ended up without a job, if it was 40 degrees below zero or colder, were given a bus ticket, but if it was warmer than 40 degrees below zero they walked out of town.

The Chairman: They were led to the highway, so to speak?

Mr. Stevenson: Yes, and this individual finally had to leave and go to Vancouver.

Senator Thompson: Is there any training given to the Manpower officer who attends at the penitentiaries? It would seem to me that there could be a requirement of

special sensitivity and understanding for this type of work. I believe Manpower officers who deal with immigrants have special training. The first priority of a Manpower officer may be to Canadian citizens who are law abiding, and, consequently, he may have a strong prejudice towards inmates. Is there any special selection for the type of individual who goes to the penitentiaries to conduct these interviews?

Mr. Stevenson: A few years ago they had a special placement section and the staff was selected to work with people with handicaps, whether mental or physical, and prisoners as well, but that has been abandoned. Mr. Miller now advises me that there is an ex-member of our staff in charge of the special section in Manpower which looks after the liaison with the prisoners.

Senator Thompson: Manpower has a number of conferences. Have you, or members of your staff, ever been asked to give talks at these conferences?

Mr. Stevenson: Yes. I attended a number of meetings in Vancouver at which I was asked to speak on parolees and how they could be assisted.

Senator Williams: With respect to native inmates—and there is quite a number across the country—it appears to me that the qualifying point in obtaining parole is job availability. This is where the expression of an opinion comes in. Most of them have no qualifying skill or training. Where then does Manpower place them, if Manpower should lend an ear?

Mr. Street: The same applies to almost all people coming out of prison: most of them do not have any trade or skill, so most of them have to compete in the unskilled labour market, which is competitive.

Senator Williams: How and where does he start competing? Inside?

Mr. Street: Any inmate?

Senator Williams: Yes.

Mr. Street: As I was explaining, he has the same opportunities to talk to Manpower, to us, to after-care, to relatives and friends, as anyone else, and we will help him.

Senator Williams: Does the native inmate feel he has the same opportunities when he is inside?

Mr. Street: I would think so.

Senator Williams: I do not think so.

Mr. Street: I do not know what we can do other than what we have been doing. We have even had a special program, for which we engaged twelve native officers. We have six or eight of them left. Some left our organization, but we have six or eight of them working in our offices now in the West.

Senator Williams: You say six or eight. You are not sure whether it is six or eight?

Mr. Street: No, I am not; that is why I did not say the exact number.

Senator Williams: In view of the large inmate population, which I understand is very high, where are these six or eight people? Are they in British Columbia, Alberta, Ontario?

Mr. Street: I know there are some in Manitoba.

Mr. Miller: In each of the four western provinces.

Mr. Stevenson: There are two in British Columbia.

Senator Williams: Is the number of natives who gain parole quite high? Is it comparable with the others, in view of the percentage of inmates?

The Chairman: Senator Williams, I think we should have the information on the distribution first. I wonder if we could have that question answered, and then go on to your second question.

Mr. Street: We have two in Vancouver, one in Prince George, one in Regina, two in Winnipeg, two in Brandon, and one in Thunder Bay.

Senator Williams: You say there are two in British Columbia.

Mr. Street: Three.

Senator Williams: There are in Vancouver two Indian organizations, one the Union of British Columbia Indian Chiefs, the other the Native Brotherhood of British Columbia, which I head. We have had an office in Vancouver since 1942, but not once in my experience in that office, which extends over 20 years, have we ever had a visit from any person from the Parole Board, or anything pertaining to matters of parole for Indian inmates. Where do they go? I think an organization like the Union of Indian Chiefs, our organization and other small organizations should be consulted.

Mr. Street: I am sure that our office is in touch with them, because we know of those organizations.

Mr. Stevenson: I was in Vancouver for ten years, and I must say that you are quite right, Senator Williams: I never did visit your office. However, I felt we were doing everything possible to work with the native people. Bill Mussell, who was a member of our staff, whom I think you know, handled a good many of these contacts. Whether or not he had been to your office, I do not know. When the group in the penitentiary became organized we assigned an officer to work with them towards forming the Indian half-way house, encouraging their getting together and sticking together, and getting resources for them outside. I do not have statistics, but I believe that they received just as many paroles as the white fellows who were applying. Certainly we knew and recognized the handicaps they were under. We tried to work with them in every way to equalize the situation.

The Chairman: I believe Mr. Maccagno has some figures on this.

Mr. Street: I have some figures dated August 1971, from our four district offices in British Columbia, which indicate the ratio of paroles granted to Indians and non-Indians. In Victoria parole was granted to 44 per cent non-Indians and 69 per cent Indians; in Vancouver, 67 per cent

non-Indians, 64 per cent Indians; in Prince George, 49 per cent Indians and 55 per cent non-Indians; in Abbotsford, 66 per cent Indians and 59 per cent non-Indians.

Senator Thompson: You say that is the ratio granted. It could be that there is a larger number of Indians within the inmate community. Or is it that of those of Indian background who are in the penitentiary 69 per cent are given the opportunity of parole?

Mr. Street: They are all given the opportunity, and they are all treated exactly the same. Those figures are the percentages of paroles granted to Indians and non-Indians.

The Chairman: The percentage of persons who made applications and to whom parole was granted.

Senator Thompson: It may mean there is a larger Indian population in the penitentiaries.

The Chairman: No, no. These figures do not add up to 100 per cent.

Senator Buckwold: I wonder if we could get it straight. Is the 69 per cent in, say, Victoria, 69 per cent of those of Indian ancestry who applied?

Mr. Miller: Who are Indians.

Senator Buckwold: Who are Indians, and got a parole as a result of their application, whereas only 44 per cent of those who are non-Indians received it?

The Chairman: That is what I understood. Is that correct?

Senator Buckwold: Could we get it straight? I would like to know what the percentage is.

The Chairman: That is the percentage of successful applications as against the total number of applications; grants versus applications.

Senator Thompson: Is that right?

Senator Buckwold: Is it correct?

Mr. Street: I will check it, but I thought it meant of the paroles granted in our Victoria office—in other words, on Vancouver Island—69 per cent were granted to Indians and 44 per cent to non-Indians.

Senator Buckwold: That does not add up to 100 per cent.

The Chairman: It adds up to over 100 per cent.

Mr. Street: Yes, that is right. Maybe it does mean what you say. It would not make any sense otherwise.

Senator Hastings: What does it mean?

The Chairman: None of those figures add up to 100 per cent, which would be splitting it between the people there. What it obviously means, I am sure, is that if 100 Indians applied 69 of them got it, and if 100 non-Indians applied 44 per cent of them got it. This is in that particular area. I suppose it changes from place to place.

Senator Buckwold: We still have not had it confirmed. Who do you classify as an Indian? Is this anyone of Indian

ancestry? How far down the line do you go? Where is the line drawn? Or are they off the reserve?

Mr. Street: I do not know.

Senator Williams: I wonder if I might try to clarify this?

The Chairman: Yes, let us get this question clear.

Senator Williams: There are the status Indians, who are under the Indian Act, whether they be non-treaty or treaty, and possibly equally as many, if not more, non-status Indians.

Mr. Street: I do not think that has anything to do with it. If he is an Indian, to us he is an Indian. It does not matter whether he is a treaty Indian or a non-treaty Indian, or a status Indian or a non-status Indian.

Senator Hastings: Or a Métis?

Mr. Street: A Métis would be included in that too.

Senator Hastings: Mr. Chairman, I wonder if Mr. Maccagno might give us the benefit of his years of experience with this problem?

Mr. M. Maccagno, Member, National Parole Board: I can only give you the figures that I have.

Senator Hastings: I am not so interested in the figures, but I would like to have your own views.

Mr. Maccagno: I can talk of generalities. I have listened to what has transpired. At one point a comparison was made with immigration. We are talking about totally different things. In immigration you have people who want to leave the country that they are in and who come to Canada or go elsewhere. Here we have people who wish to return home.

Some of them, as Mr. Stevenson has said, would like to start a new life elsewhere. It may be that they shamed their relatives, and so on and so forth, and they want to go elsewhere. But when we are talking about the native people, they are people who would like to return home, just as I would like to go home if I were in their position, and most of us would like to go home, so we are talking about two different things.

In the area of parole and job opportunity, if there is a job there, it will help get parole. There is no hard and fast rule, but consider this. For a man who is serving time, paroling him to an area where we know, and it is quite evident, that he will never make it, we are not doing him a favour. It is better to wait a while and see what we can do or how we can use our resources to plan something better for him, if not right away, then in a month or two. Just letting him out and sending him back means that he has all his good time lost—plus. So we have to be careful of that.

Dealing with my personal statistics, I am a relatively new member of the board, and have kept track of every case that has come before me across my desk and during interviews out in the field. My studies are not yet complete, neither are my statistics. However, for the penitentiaries in the prairie provinces, my figures refer to those persons of native ancestry and include both the Indian and Metis. I have been out with different panel members on these interviews and these are listed by number. Out of all the inmates of native ancestry interviewed, my figures indi-

cate that 54 per cent have been granted some type of parole. The overall figure of paroles granted to inmates of the three prairie provinces who have been interviewed by the panel members with me is 53 per cent. Do not forget that these are the figures of just one Parole Board member travelling with one other making up the panel. I have the names and file numbers and any other information that you may wish on them and trust you can accept that. When I refer to some kind of parole, I include the whole gambit, from Parole Granted, Parole in Principle, minimum Parole and Day Parole. Does this answer your question?

Senator Williams: It still appears to me that the job opportunity is one of the biggest deciding factors for an Indian who gets parole. I am of the opinion that in most cases he does not know where to start. We have had a few coming to our office who have expressed themselves as to how they feel when they come outside. They are definitely lost, they do not know where they are, they do not know where to go, and they seem to have lost part of themselves somewhere. That is my own experience.

Also, many of the younger people who are on probation make the mistake of coming into our office, as if we were the probation office, and half the time they do not know where they are. They just come in scared.

Mr. Maccagno: I would have to agree in one respect, that there is a problem, undoubtedly. But let us analyze what you have just said, and put it in another way. Is it strictly a parole problem? Is there a high rate of employment among the native people who have never gone to penitentiary?

Senator Williams: I would say no, but those who have not gone to penitentiary have a better opportunity because they are on foot.

Mr. Maccagno: They have a better opportunity because they are on foot, but do the records show that there is a high employment rate, are there a good number of them fully employed?

Senator Williams: There are very few in the Province of British Columbia who are employed for long lengths of time, because in that province the native people are seasonal workers. They could be in industry, they could be in the mining, a good many in fishing, and in the agricultural areas. It is mostly seasonal work. Those who are not, and those who are outside, who have not been in these institutions, have employment, but during the seasons.

Mr. Maccagno: There is a lot of unemployment, too?

Senator Williams: When the seasons are off. The employment ratio of the British Columbia Indian is fairly good.

Mr. Maccagno: I do know, sir, that when we are on the panel and they come before us, as far as the board members are concerned, we certainly pass on to them all the information that we have. There is no question about that. We make every effort to assist them but experience many difficulties. These do not pertain only to the person in penitentiary, although the fact that he is in penitentiary certainly does not help at all.

However, there are certain opportunities available in the penitentiaries. One can upgrade himself and there are a

good number of inmates who have upgraded themselves and who have taken on vocational skills. These vocational opportunities are available; some take advantage of them and others do not. Again, upon release some take advantage of this additional knowledge while others do not. This does not apply to the native people only, but we find the same thing applies right across the board.

Senator Williams: You will understand that he may have taken some form of vocational training while he is within. Then comes parole. Actually, he has no qualification status. He may lack Grade 12 or whatever the case may be. Take a young Métis woman. She may train as a nurse's aid or as a practical nurse, but she has no recognition in hospitals or institutions, because she has not got that grade standard.

The Chairman: I think this is really going beyond the question of parole. We have figures of the percentage here, in Mr. Maccagno's area, and he has said they are approximately the same, with a shade difference, as to the parolees among them.

Senator Thompson: Mr. Chairman, may I make the point that I do not think it is getting beyond the parole question? However, in another area, we will be looking at training within institutions.

The Chairman: That is right. That is what I had in mind, that we will have penitentiary people here who will look at that. A question that might be asked, if someone wishes to ask it, is whether, of the 32 per cent of parolees who are unemployed, do we have figures as to what percentage are native people? This would answer your question, I think, and get down closer to what you are at, Senator Williams. Do you keep any statistics on that kind of question?

Mr. Stevenson: No.

Mr. Miller: No running statistics, Mr. Chairman, but a survey could be made.

The Chairman: I wonder if that could be done for us, then.

Senator McGrand: Senator Thompson referred to the service we give to certain immigrants in the finding of jobs, a service which is not given to ex-prisoners. Is this due in any way to the reluctance of employers to employ ex-prisoners? As I understand it, when foreigners come to our country there is a kind of mutual help that they receive from little ethnic communities of their own. They tend to help each other. That is something that ex-prisoners do not benefit from; they do not have that feeling of community.

Mr. Street: On the other hand, ex-prisoners usually get a great deal of help from their families, friends, relatives, and so on. They have the same access to manpower resources as anyone else, plus the fact that they have after-care agencies and us helping them.

Senator McGrand: But do employers hesitate to give employment to ex-prisoners?

Mr. Street: Naturally, there is some difficulty. I think it is not as bad as it was. If the inmate has a trade, I say he can get the job; but most of them do not have a trade. I suspect that most of the immigrants coming into the country are

qualified and are not brought in unless they have some qualifications. If a person has a trade, he can get a job and is not turned away; if he has not got a trade, he has to compete in the unskilled labour market. At the moment we have an unemployment situation of about 6 or 7 per cent. So we have the ex-inmate having to compete with people on the outside who have never been in prison; but even then we have about 70 per cent of our parolees who are working.

Senator Fournier (De Lanaudière): Are there ever cases where an inmate refuses the privilege of being paroled?

Mr. Street: Not exactly. We have some who do not apply for parole. There would be no such thing as refusing parole because we would not consider an inmate if he did not apply. But the number who are eligible to be considered for parole but who do not apply is decreasing all the time. That is probably because of the fact that inmates see that more paroles have been granted in the last few years, plus the fact that they now know that even if they do not get parole they are going to be on mandatory supervision when they come out of the penitentiary anyway.

Senator Fournier (De Lanaudière): As it stands now, when a person is sent to prison he automatically earns a certain amount of time off so that for a five-year sentence the person is entitled to be out before that five years is up. Do you keep him inside or do you let him go just the same if he makes no application for parole?

Mr. Street: Up to now he has been released at the end of his term, which would be his full sentence less one-third. He can earn up to one-third of his sentence off for statutory remission and earned remission. But from now on that one-third remission time will be served on mandatory supervision, which is almost the same as parole.

Senator Fergusson: Mr. Chairman, can Mr. Street tell us how many cases there are of inmates who have been released on mandatory supervision?

Mr. Street: I cannot give you that exactly, Senator Fergusson. It is just coming into effect now. It was proclaimed in August of 1970, and the first persons who would be affected by it would be those who were sentenced after that date on a two-year sentence 16 months ago. So it is just starting now. We have estimated 30 a month.

Senator Fergusson: So, really, none of the mandatory supervision cases would have been completed yet.

Mr. Street: What I said is subject to the anomalous exception where a man could have got a sentence of six months for escape after he would have qualified for it. We have had a few of those cases. They might have completed it, but there are very few of those. So it is just really starting now.

Senator Haig: What exactly does mandatory supervision mean?

Mr. Street: It means that if he does not get parole he will be under supervision for his remission time, which is about one-third of his sentence.

Senator Haig: You mean he will have to report to somebody every day?

Mr. Street: Not necessarily every day, but periodically. He would also be subject to restrictions and conditions in the same way as a parolee would.

Senator Haig: Supervision by whom?

Mr. Street: By one of our parole officers or by after-care agencies. Half of our supervision has to be done by persons of outside organizations, so it could be an after-care agency.

Senator Haig: If he fails to agree to the terms, he is put back—is that right?

Mr. Street: It could be.

Senator Fergusson: I know that it is just coming into effect now, but would you know how many are on mandatory supervision now?

Mr. Street: No. It is just barely starting.

Senator Hastings: I think we should understand what mandatory supervision is. I think the invoking of this act in this particular procedure was a very retrograde step, because we must understand that, if we are taking a man who has been sentenced to a term of imprisonment and has served two-thirds of his sentence, up to now that man has been entitled to his remission, both statutory and earned, and has been free to go after two-thirds of his sentence. But under this act he is now under mandatory parole for the whole of his sentence. In other words, there are, no doubt, individuals to whom you refuse parole, and when it comes to the end of such a person's sentence and he has earned his remission, you will now tell him that parole is exactly what he needs. I am afraid that is going to receive an answer it richly deserves. I cannot accept the fact that it is going to be of any benefit whatsoever to the man.

As I have said, if a man has normally been refused parole, then to expect him to live up to your regulations and give up the time that he has lost is just asking too much of him.

What could quite easily happen would be that an individual would end up serving more time than his original sentence because he would have his mandatory parole continually revoked under the same regulations that apply to ordinary parole, namely, on the warrant of a parole officer.

It seems to me, Mr. Street, that there comes a time when these men have to stand or fall on their own and that all the supervision you could possibly give them would simply not work.

The Chairman: With all respect, Senator Hastings, you have been expressing a number of opinions one after the other, which will be of value to the committee when it discusses a report. But perhaps you could frame your opinions in the form of questions so that the witnesses might answer them, if they do have answers to the questions you have in mind.

Senator Hastings: Mr. Street, how many men have been returned to the institution as a result of forfeiture or revocation of mandatory supervision?

Mr. Street: Three: one in January and two in December.

Senator Hastings: I understood there were five in November alone.

Mr. Street: I am sorry; I did not have the complete information before me. Yes. I think the total would be more like eight or nine. In any event, it is the law of the country now, but the reason I am in favour of it is that we are concerned primarily with the protection of the public and we think the public is best protected by rehabilitation of inmates. Moreover, if the people we select for parole need the guidance, counselling, treatment, advice and surveillance that go with good parole supervision, then the people who do not get parole and who are not under our selective system need it even more. I believe that is why it has become the law. Moreover, it also has the deterrent effect. Eighty-three per cent of the men in prison have been there before. Some of them are very vicious, dangerous men, and they are going to come out eventually, whether we like it or not. So we think it is desirable for them to come out under as much control as possible, especially when they are not good risks for parole in the first place. The deterrent effect is there because they know that parole will be revoked if they do not behave.

Senator Hastings: Is not the protection of the public really the duty of the police force, Mr. Street?

Mr. Street: Yes, but we are as much concerned with that as the police. We do not parole people if we think the public is not going to be protected from them. We do not parole people if we are sure they are dangerous, vicious or violent. It seems that there has to be some risk involved, but we assess it pretty carefully. Part of the reasoning is that we know they are going to come out anyway, whether anybody likes it or not, and perhaps it is better to give them parole so that they will come out under control and will be given some assistance, which I am sure they will need, rather than have them staying in until the end of their sentence and then being free and clear of any restrictions at all.

Senator Hastings: Is not the purpose of the Parole Board or the parole service rehabilitation?

Mr. Street: Yes, it is, but we are also concerned with the protection of the public. If there has to be a choice between the welfare of the individual and the protection of the public, then, in our view, the protection of the public must come first.

Senator Hastings: Would you not be better off using your additional staff in serving, assisting and guiding, as you have indicated, the men whom you have considered worthy of parole than chasing around trying to control men to whom you have refused parole?

Mr. Street: I think we have to do both. I think the public needs to be protected from the people who were not considered to be good risks for parole, and at the present time we are paroling perhaps too many people. We are paroling two out of three. We are slowing down a little now, but we had been paroling two out of three.

Senator Hastings: Why not bring all these resources to bear on these people that you are paroling?

Mr. Street: We do. But we have to do the best we can, and the law says that there shall be mandatory supervision and it says that we shall be responsible for it, so we have to do the best we can. I think the one-third who do not get parole are of more concern to the general public than the two-thirds who do. It is just as important that they should be under control and should be given as much help as we can give them, and that they will accept as the two-thirds who volunteered for it. Furthermore this has the effect of getting people more interested in parole and having a more positive attitude. I cannot give you any statistics on it, but some prisoners do not want to apply for parole because this seems to be playing into the hands of the administration. I think perhaps such a prisoner may want parole but he does not want the other inmates to think that he wants it. If it is given to him he will take it, but he does not want to put himself into the position of applying for it. Furthermore he does not want to put himself in the position of hoping that he will get it when he knows that he does not have a good chance of getting it.

The Chairman: Is it not the case that a great number of people do not ask for parole because they do not want to have anybody looking over their shoulders, and they justify it to themselves by saying, "I will do my time and then I will be on my own when I get out"?

Senator Hastings: Do you think that a parole officer or parole supervision will help that kind of individual?

The Chairman: I am not in a position to answer that question.

Senator Hastings: Mr. Street, do you think your parole service is assisting the individual who does not want supervision?

Mr. Street: I take it that it assists some of them. They are not going to be easy cases. But if we have nothing else left, at least we have the deterrent effect when a man knows that if he does not behave or if he commits another offence he will lose that time. I think "good time" ought to mean what it says. If the court has sentenced him to five years, then, if he is going to get any reward, it should be based on the fact that he has behaved himself for that five years and not just for a part of it. He has nothing to fear from mandatory supervision or parole supervision unless he intends to commit a crime, and they are the people who should be brought under control, I think. Apparently, that is what the government thinks or it would not have passed the law.

The Chairman: Let us take the case of the fellow serving six years. At the end of four years, by getting one-third of the time off, he would be ready for release. So he gets out at this stage and he goes on mandatory parole or mandatory supervision. Then let us say that after he has been out for one year he does something. Can this parole be revoked and can he be put back in?

Mr. Street: Yes.

The Chairman: For how long?

Mr. Street: For two years.

The Chairman: So he is now going to serve two years from the time that he gets into trouble and this rides with him until when?

Mr. Street: Well, if he goes back for two years, then he starts earning good time again.

The Chairman: But supposing the fellow is out during this earned remission period of two years which he has carried with him, and he gets into trouble within that two-year period, then he loses all the remission he has already had?

Mr. Street: Yes, he would be returned to prison to serve the two years, but he can earn more remission during that time.

Senator Hastings: But then that would be a total of seven years on an original six-year sentence.

Mr. Street: If you count the time he was out on parole, that is true. If he spends a year on parole, that would not count and he would go back to prison for two years. Then he would start earning one-third of that two years. This is not popular with dangerous, violent or vicious people or those who intend to commit further offences, but then I am not running a popularity contest for criminals who intend to continue to break the law. I am concerned with protecting the public against these people. As I say, I am not popular with those prisoners because I think these things, but then I am not concerned with those who intend to commit offences. They should be brought under control either in or out of prison.

Senator Hastings: I quite agree, but I do not think the National Parole Service or the Parole Board are the institutions to fulfill that purpose.

The Chairman: Well, I think you are writing our report for us at this stage. Try to keep your statements as short as possible in laying a background for the question you wish to ask. We cannot just have a debating society here.

Senator Thompson: Following on that point, Mr. Street, would you prefer that the dangerous criminals whom you would not wish to supervise on parole, or for whom you would not suggest parole, should be supervised on mandatory parole by a police force?

Mr. Street: Yes, I would be glad to get rid of that headache. I have enough headaches as it is. We get blamed for everything in sight, including the things they do. I would be glad to dump that one into somebody else's lap. But I think we are the people who should do it because we are organized to do it. Besides, it is not just a matter of surveillance. Our men have to try to get through to these men, to establish a relationship with them and communicate with them and try to gain their confidence to help them. It is not just a matter of breathing down their necks to see that they do not step out of line. It is not for that we have parole officers with master's degrees in social work. We have 200 of them, and they are out there to help these men as much as they can. Now while some of these men do not want it, even if they are forced into a quasi-treatment situation, some of it may rub off and some of these men may get some confidence in their parole officers who are

dealing with them and impressing upon them the desirability of leading a law-abiding life.

Senator Thompson: Do you see a relationship between the police forces and these difficult disciplinary cases?

Mr. Street: Very much so, particularly in cases where they see these people misbehaving. As the police chief in one of our cities told me once, if he sees a man hanging around a dock area where there are warehouses at 3 o'clock in the morning he naturally becomes concerned about it. But if that man is on parole, we can see to it that he does not hang around the docks in the vicinity of warehouses at 3 o'clock in the morning. However, the police could not stop him if he was not on parole. In other words, it gives you the means of controlling the people who are likely to commit offences.

Senator Thompson: I think there are some first-class community people in the RCMP. I do not quite share the point of view of my colleague who has mentioned the question of rehabilitation. I raise this question because I know that in the police forces there are those who are very much concerned with the rehabilitation of offenders.

The Chairman: Senator Thompson, one of the things I want to avoid is asking people who are in one department what they think about people in another department. We are going to have the Commissioner of the RCMP here to tell you what he thinks about his people, and we are going to have the Penitentiary Commissioner here to tell you what he thinks about his people, but at this particular stage of the proceedings I think it may be embarrassing, and I am not sure it will give us very much useful information to ask people from one area to pass judgment on those who are their equals in another area of the work.

Senator Thompson: Mr. Chairman, with respect, I think you are prejudging my question.

The Chairman: If you would get to it faster, I would not have to.

Senator Thompson: I apologize for my slowness. Do you feel there is any merit in some kind of inter-relationship between parole officers and, let us say, the RCMP? Let us say that the RCMP officers could take a course in parole, and your people could take a course in police instruction or something like this. You have mentioned something about a master's degree. Is something like this already being done?

Mr. Street: I think it is very important that parole officers work with and understand the functions of the police, and that at the same time the police understand what our functions are and that we work very closely together. I feel we do this. We are certainly at some pains to establish liaison at all levels, and I think this is very satisfactory and desirable. Although the police are primarily concerned with surveillance as part of their function, I do not think there is a police officer in the country who has not gone out of his way to help a criminal at some stage.

Senator Thompson: Do you, or someone from your department, go and speak to the RCMP trainees in Regina?

Mr. Street: Yes, we go all over the country. In Ottawa there is Mr. Therrien, and Mr. Miller also does it. We do this in Regina and all over the country.

Senator Fergusson: My other question had to do with agencies with which you deal. What is the standard an agency has to reach before you recognize it as one with whom you would make a contract? Also, are there other organizations who work in this field that you do not recognize? I am thinking of one particular organization which presented a brief in Prince Edward Island. They were not working with parolees, but with people who had been in jail. They themselves had been in jail at one time. Would you accept that kind of organization, or that kind of group?

Mr. Street: Yes, we would accept anyone who is working in this field. We have many agencies with whom we make contracts other than, let us say, the John Howard Society.

Senator Fergusson: Yes, you have a list of them at the end of our minutes. The organization I was concerned about does not appear on that list.

Mr. Street: Well, if they asked to be on the list, and if they are suitable to us in performing this work, we would be happy to make some arrangement with them. We do expect them to do the work the way we want it done.

Senator Fergusson: Is there a standard which they would have to reach? Are they required to have so many social workers, or people such as this, in their agency?

Mr. Street: No, that would not be feasible. Most of them do have social workers, but you cannot insist on that high an academic standard. We are trying to encourage the use of volunteers wherever possible.

Senator Fergusson: If you were satisfied with them, you would make a contract with them?

Mr. Street: Oh yes.

Senator Fergusson: At the end of the hearing on December 17 I asked you if you could tell me how many women were granted parole from Kingston, how many received parole, broke their parole and had to be returned. I believe you indicated you would send that information to me. I have not checked all of my mail—

Mr. Street: Senator Ferguson, I apologize, but I did not send it to you.

Senator Fergusson: It is on the last page.

Mr. Street: If this information was not sent to you, I beg your pardon.

Senator Fergusson: That is all right, I am in no great hurry for it.

Mr. Street: In 1970 there were 39 paroles granted in the prison for women, 14 were revoked and 6 were forfeited which totals 20. Up to November, 1971 there were 30 paroles granted; 8 have since been revoked or forfeited. I will give you this information now, and I am sorry I did not send it to you.

The Chairman: Shall we have this included as part of the record?

Honourable Senators: Agreed.

Details follow:

FEDERAL STATISTICS ON WOMEN

Re: Paroles Granted and Violated

	Paroles Granted	Paroles Violated Revoked	Forfeited
1970	39	14	6 ⁽¹⁾
1971	30	5	3 ⁽²⁾
(Nov. 30)			

⁽¹⁾ 2 were granted Re-Parole immediately

⁽²⁾ 1 was granted Re-Parole immediately

In addition:

1970—16 were granted Day Parole

5 were granted Parole for Deportation

1971—15 were granted Day Parole

1 was granted Parole for Deportation.

Senator Buckwold: That would seem to be an awfully high number.

Mr. Street: Yes, it is high. However, most judges do not like to send women to prison. Many of these women have problems with drugs and they are very difficult to deal with. There are other statistics which I have sent to you.

Senator Buckwold: Is this the last opportunity we will have to converse with Mr. Street and his colleagues?

The Chairman: No, Mr. Street will be here again. However, we would like to cover this part of the matter today. Mr. Miller will be here tomorrow, in an *in camera* session, to deal with certain aspects of actual cases. The reason for the *in camera* session is to protect the innocent, so to speak.

Senator Buckwold: My first question is a very minor one. Does the Parole Board have anything to do with temporary leaves which are granted and for which we have gotten into trouble recently?

Mr. Street: We do not have a single thing to do with that. I hope the press will take note of this: We did not do it!

Senator Buckwold: This is the reason I deliberately asked that question because I have personally heard many derogatory remarks about the Parole Board when, in fact, they had nothing to do with the temporary leaves.

Mr. Street: No, we make enough mistakes of our own, and we do not like to be blamed for someone else's. No we do not, but a lot of people feel we do.

Senator Buckwold: My second question concerns the amendments to the Criminal Code which will be coming forward and which will involve different types of sentence. Let us take, for example, a judge having the prerogative of sending a man to prison for a weekend. I am

not asking you to assess that practice. But, from the point of view of the Parole Board, would this make matters any easier?

Mr. Street: Well, it is none of my business, but I think it is an excellent type of sentence and it is long overdue. I used to do it twenty years ago, when I did not have the authority to do it! If it saved a man his job I would do it, in any event.

Senator Buckwold: As part of the overall system of dealing with criminals?

Mr. Street: Yes, otherwise the best you can do is if a man receives a sentence of thirty days for drunk driving, or two weeks, if we are going to save him his job we have to give him day parole which will let him out during the day. We can still do this. However, this will overcome the necessity of following that procedure. He can serve seven weekends instead of a two-week period and still maintain his job. This will not affect us.

Senator Buckwold: My last question is of a general nature, in view of the fact this may be the last time we shall see you for a little while.

Mr. Street: I shall be around.

The Chairman: He will be around. This is the last time he is formally invited to be present, but he will be around.

Senator Buckwold: The purpose of this committee is to study the parole system generally. I was wondering whether you are prepared to make a general statement as to what, in your opinion, should be done to improve the system. For example, you have already indicated you could use more staff and better trained people. Over and above that, would you have any general opinion as to how the system could be improved, which would involve new approaches and an improvement of the liaison between the people concerned—all the matters we have been discussing today?

The Chairman: I might remark at this point, Senator Buckwold, that Mr. Street has expressed a desire, which I am very happy to hear, to be present at as many of our hearings as we will allow him to attend. It occurs to me, in any event, that after we have heard all the evidence and towards the end of our hearings, we could probably have him and possibly others of his staff return.

Senator Buckwold: I thought this might be my last opportunity.

The Chairman: I have a feeling that that type of question might more usefully be put at a later stage.

Senator Buckwold: Could I leave it that it is postponed? I hope, however, that at some time this committee will hear the thoughts of Mr. Street and his colleagues, so that we can proceed with the best possible review including consideration of parole systems in other countries.

Mr. Street: Thank you, senator; this is like meeting Santa Claus.

Senator Buckwold: The ultimate will not be possible and we will never arrive at the ideal, but I think we may have some progressive thinking.

The Chairman: When we have received the very type of information to which you refer we will have another session with Mr. Street and ask for his practical reactions to the various aspects.

Senator Thompson: I wish further to discuss Senator Buckwold's first question. In my opinion the Parole Board becomes involved in areas for which it has no responsibility. Do you have a budget for public relations and, if so, an information officer or program?

Mr. Street: We have an information officer, Mr. Parkinson, who is in attendance here today. We could do a great deal more in the field of public relations and are at some pains to appear on television, speak on radio and hold press conferences. We also make speeches at various functions and deliver lectures.

Senator Thompson: Could you tell me the amount of the budget and something of the program?

Mr. Street: I know of no budget. We are simply allowed to hire an information officer. I suppose his salary constitutes our budget.

Senator Thompson: Could I ask you a series of questions?

Is any part of this program directed towards changing the attitude of the public towards acceptance of the parolee?

Is any part of this information program devised to be used for teaching civics in public schools?

What part of it is specifically addressed to the mass media?

Because Senator Williams raised this point, I am interested in what specially designed information program you have for informing native associations and organizations and native offenders with respect to parole?

Mr. Street: We do as much as we can in all those areas. We have no specific program for giving lectures at civics classes. We have, however, recently received a request to which we will respond. We speak to anyone who will listen to us, so there is a good deal of public speaking by our entire staff throughout the country. Members of the board and its staff in Ottawa also take part.

The whole idea of the program is to inform the public as to our function and operations, and to give them the understanding that our function is rehabilitation. I do not think we can achieve anything near the desired or possible result. We keep in constant touch with the media and are available at any time they wish to speak to us which, unfortunately, seems to be only when something goes wrong. When I and other members travel we hold press conferences in cities other than Ottawa.

I believe I have answered your question with respect to the budget. There is no special budget, except the appointment of an information officer and the printing of pamphlets for the guidance of magistrates, judges, police, the public and supervisors.

As for the native population, we have at least eight Indian officers in the western offices. Our staff keep in touch with the tribes, councils and reservation authorities. Again, there is no limit to the requirements in that field.

Everything is not perfect, but we do the best we can with what we have.

Senator Thompson: I believe you deliver lectures at RCMP schools. Do other key organizations submit invitations to speak which must be declined because of insufficient staff?

Mr. Street: I cannot manage alone, but we encourage our officers to make speeches and meet people. I regard attendance at meetings of judges, magistrates and police chiefs as a high priority and attend whenever I am invited.

Senator Thompson: Therefore, the time of a parole officer is not spent only in supervision of a case load, a large part of it is devoted to community interpretation of his role?

Mr. Street: Very much so. One of his important functions is to keep in touch with judges, magistrates and police forces in his area. He also maintains contact with members of the staff of the Attorney General and the prisons.

In a few years we hope to appoint regional directors. We will then have officers available for increased liaison and public relations. Although they are all encouraged to do that now, sometimes it is difficult for them to do it as well as we think it should be done.

Senator Thompson: Could you express an approximation of the proportion of time you consider that an officer should spend on the public relations role in comparison with the remainder of his duties in relation to parolees?

Mr. Street: I could only estimate and guess at least 25 per cent. Unfortunately, he becomes snowed under with requests for parole and supervision and is unable to do as much as he or we think he should. It varies from one office to another, so I could not say.

Senator Thompson: This would become an important part of the responsibilities of a regional officer?

Mr. Street: Yes, it would. Some of our offices are very big now, with 14 men. We find it necessary to appoint a man just for office administration, so that the chief officer has more time for liaison and public relations.

Senator Hastings: I would like to turn, Mr. Street, to parole revocation and forfeiture. I will refrain from expressing an opinion in this regard, but ask quietly and simply: Would you explain the terms "revocation" and "forfeiture" and the procedure used with respect to the revocation of a parole?

Mr. Street: Revocation simply means that parole can be terminated by action of the board because the man failed to abide by the conditions of his parole, or he may have committed a minor offence. If that happens, the parole officer, or whoever supervises, reports to us that the man had violated the conditions of his parole in one way—it is usually in more than one way—and the board then decides whether to revoke his parole. It is done by action of the board.

Forfeiture occurs automatically. If any person on parole commits an indictable offence while on parole, his parole is automatically forfeited by operation of the law and he would be returned to the institution.

Senator Hastings: As I understand it, the parolee is apprehended on an information warrant signed by one of the officers. He is taken before a magistrate, who simply verifies the signature on the warrant and the identity of the parolee, who is then committed to an institution.

Mr. Street: Yes.

Senator Hastings: As I understand it, there is a period of 14 days in which the parole officer may reinstate the parolee.

Mr. Street: Perhaps I should have explained that that is what we call suspension. Any member of the board or designated officer in the field can issue a warrant of suspension on his own authority, which means that the person concerned is arrested and brought before a court. The officer who issued the warrant must report to the board, and the board decides whether to revoke or continue the parole. If that is not done, the person must be released within two weeks. That was designed especially for such persons as those on drugs. It is sometimes advisable to bring them in, dry them out, and then reinstate them on parole, without having their parole actually revoked or forfeited.

Senator Hastings: The parolee can be incarcerated without a hearing, and have his parole revoked without being present to defend himself?

Mr. Street: Yes.

Senator Hastings: He has no opportunity of defending himself or of calling witnesses to refute any charges?

Mr. Street: No. When he is revoked, he is told in no uncertain terms why his parole has been revoked. He knows why, anyway. When he is returned to the institution he is allowed to appear before a panel of two members of the Parole Board, at what is known as a revocation hearing.

Senator Hastings: But that is after the fact.

Mr. Street: That is right.

Senator Hastings: If an inmate of an institution violates a law he is taken before a magistrate, where he has the opportunity of counsel and of calling witnesses. However, if it is an ordinary disciplinary matter within the jurisdiction of an institution, he appears before a warden's court with the opportunity of cross-examining and calling witnesses. He can appeal that decision to the regional director. He receives this treatment within the institution. Yet in this procedure which affects his freedom, he has the benefit of no procedure or device.

Mr. Street: No, except to appeal to the board. Anything can be appealed to the Parole Board. If a person is in a federal prison, however, he has the opportunity of appearing before two members of the Parole Board sitting as part of a panel.

Senator Hastings: But he does not have the benefit of counsel?

Mr. Street: No.

Senator Hastings: And he cannot cross-examine or refute evidence?

Mr. Street: No, he cannot.

The Chairman: Can he see the evidence?

Mr. Street: No, but he is told why his parole is revoked, and he knows perfectly well why it has been revoked. If there is any doubt in his mind, he is given an opportunity of appearing before the board and of explaining his actions.

The Chairman: Can he call witnesses?

Mr. Street: No.

Senator Buckwold: Are there any occasions where a Parole Board, hearing an appeal against revocation, reinstates the parole?

Mr. Street: Revocation is determined by the Parole Board, but a suspension can be determined by a parole officer. The board may see fit to continue a person on parole even though an officer has suspended him.

Senator Buckwold: But in the meantime he would have been returned to the penitentiary. Are there many occasions when this happens?

Mr. Street: Perhaps Mr. Maccagno can answer that question.

Mr. Maccagno: A man may commit an offence and his parole is forfeited. In the area of revocation, the man may violate some of the conditions of his parole and his parole is revoked. He is not happy about it, and he writes in. I have been present at a number of revocation hearings. In most cases the person concerned is well aware of the grounds for his revocation. Often at the point of revocation he agrees that he has violated many conditions. He is not so concerned about the fact that his parole has been revoked as he is about knowing how and when he can apply again. We try to satisfy him in this respect. I recall one case where it was decided that rather than see the person again in two years, the board would have another look at his case in six months or a year. Most inmates admit they have violated their parole conditions. They will ask whether the violation was that serious and when they can re-apply for parole.

The Chairman: Would any of them say, "I did not do it," in other words, deny the things they are alleged to have done?

Mr. Maccagno: In the cases I have seen, I would have to say no.

The Chairman: You have not been present when anyone has said that?

Mr. Maccagno: No; but it could happen.

Senator Buckwold: With regard to revocation, to a degree it is an arbitrary decision on the part of somebody.

Mr. Street: On the part of the Parole Board, yes.

Senator Buckwold: Let us take an example. Someone who is on parole may violate a minor condition of his parole. Perhaps he travels somewhere where he should not.

The Chairman: Or perhaps he keeps bad company.

Senator Buckwold: It might be nothing that involves the law; he merely breaks some minor condition.

Mr. Maccagno: In the cases I have seen, the parolee is given ample opportunity of explaining his actions. If his is a drinking problem and he is drunk almost daily, and has been warned time again, he does not necessarily forfeit his parole immediately. There are some cases where a "no drinking" clause is made a condition of his parole.

Senator Buckwold: I want to go back to this process Senator Hastings spoke of. If a parolee violates a condition of his parole the parole officer, I presume, or a police officer or someone reports this to the local office?

Mr. Stevenson: Yes, the local office.

Senator Hastings: The local office signs a warrant?

Mr. Street: Yes, for suspension.

Senator Buckwold: The parolee is arrested and brought back to the institution, just like that?

Mr. Stevenson: He is put on suspension by the local office if his parole officer, with his supervisor, assess the situation and decide whether it is serious enough to suspend. In other words, has the parolee had a number of warnings? Is there a danger of offences occurring, and so on? If it is decided not to issue a warrant, then the parolee is seen right away and is warned about his behaviour and is told to take some action to improve his behaviour. If it is decided to issue a warrant, then the parolee is brought before a magistrate or a justice of the peace, his parole is suspended and, consequently, he is returned to an institution for a temporary period. The local office has the authority to cancel that suspension within 14 days. While the man is in custody the parole officer interviews him and, if it is decided it is serious enough to hold him longer, then his case goes before the Parole Board. If there is a police report, or any other reports, they will be included among the documents placed before the Parole Board, plus the record of how the man had been doing on parole, and it is then up to the Parole Board to decide whether it is serious enough to revoke or whether to continue parole with, perhaps, a tightening of conditions or a change in location.

Senator Buckwold: How long would it be before the Parole Board actually held a hearing in such a case? I am not speaking now of an application for parole, but where a parolee is returned to an institution pending Parole Board review of his case?

Mr. Street: It would be heard before the next panel to come to the institution. The maximum period of time to elapse would be two months.

Senator Buckwold: It would be no more than two months?

Mr. Street: It would be no more than two months and more likely a month in the provinces of Ontario and Quebec.

Senator Haig: Mr. Chairman, I regret having missed the first couple of meetings. My question to Mr. Street is this: How is the inmate advised of his rights to parole?

Mr. Street: The officers in the field conduct a number of sessions every month in as many places as they can, and they talk to all the new inmates that have come in that month and advise them as to parole and how they can apply for it. We also have pamphlets which are available and which explain in very simple terms what parole is, what is involved in it, and how it is applied for.

Senator Haig: Is it also explained to the inmates at what time they may apply in relation to their sentence?

Mr. Street: Yes.

Senator Thompson: Do you look after parole with respect to provincial prisoners?

Mr. Street: Yes.

Senator Thompson: There have been several suggestions from the provinces to the effect that they would like to look after the parole system. Would you care to comment on that?

Mr. Street: That suggestion has been made by some governments, and it was recommended in the Ouimet commission report. I have no strong views one way or the other. If they wanted to do it, I would have no objection. If it was done perhaps we could offer even more sophisticated assistance to prisoners in federal prisons. I feel we do a fairly good job now. One result of granting provincial jurisdiction in this area would be five to ten different systems regarding parole. Chief Justice Fauteux, in his report, recommended that there should be one uniform parole system all across Canada.

One of the important things, I think, is that Ontario has a large number of prisons and they have a parole board which deals with indeterminate portions of sentences. In my opinion, this system is not a good one because you have two parole authorities dealing with the same prisoner and the same sentence. Ontario might very well either have their own parole system, because their board does interview people, and so on, or else ask the government to put an end to indeterminate sentences. I do not think we could undertake to visit all provincial prisons in the way we visit federal prisons. Our officers visit all prisons, of course, but in order for the board to visit all prisons, both federal and provincial, it would have to be doubled.

Senator Thompson: May I just clarify the role of the Ontario Parole Board? The Ontario Parole Board interviews provincial prisoners—

Mr. Street: I did not fully explain that. If a person in Ontario receives a sentence of 12 months definite and 12 months indeterminate the Ontario Parole Board has jurisdiction over the 12 months indeterminate or the indefinite part of the sentence, and they do interview the prisoner with respect to that portion of the sentence. With respect to the 12 months definite portion of the sentence we have jurisdiction, and if we feel he is a good candidate for parole we ask the provincial board if it is agreeable to parole for the portion of the sentence over which it has jurisdiction. The result of this is, of course, that there are two parole authorities dealing with the same prisoner with the same sentence, and it is not desirable.

Senator Thompson: Do other provinces have parole boards?

Mr. Street: British Columbia has one, but it is somewhat more limited than the Ontario board because it is restricted to dealing with persons between the ages of 16 and 23. Those are the only other parole systems in the country apart from the National Parole Board, although some provinces have parole boards to deal with provincial types of offences such as careless driving, hunting without licences, and other offences contrary to provincial statutes.

Senator Hastings: May I return for a moment to the area of parole revocation? Let us assume, Mr. Street, I am placed on parole for a period of two years and at the end of one year my parole is revoked and I am returned to the institution to serve the remainder of my sentence as well as the sentence I have already served on the street.

Mr. Street: Yes.

Senator Hastings: Do you feel that it is fair to make me re-serve the time I successfully served on the street?

Mr. Street: Yes, I do feel it is fair because if the parolee does not commit an offence he has nothing to fear from having to serve his sentence in total. A parolee is not returned simply because he missed an appointment with his parole officer or because he went out of town for a day without telling anyone. Parole is revoked if there has been a serious breach of parole. I also feel this is a good thing because as the period of parole draws to an end the deterrent factor, if it were set up as you might wish it to be, would be almost negligible. In other words, if he were not to serve the remainder of his sentence including that portion served on the street, the last month or week of his parole would become absolutely meaningless. For those reasons I am in favour of it as it presently stands. The Ouimet Commission suggested or recommended that a parolee should always serve 25 per cent of the time.

Senator Hastings: I regard these as four categories of custody—that is, the maximum institution, the medium institution, the minimum institution and parole; and it seems to me that if we move a man from a minimum institution to a maximum institution because of an error on our part, we do not make him re-serve all the time he had been in the minimum institution. Now, if we place a man in the fourth category, that is, on parole, and it proves unsuccessful, as a result of which he is returned to an institution, should we make him re-serve the time that he successfully served on the street? I feel it is a rather heavy penalty to place on this individual.

Mr. Street: Well, I do not regard parole as a form of custody. He is serving his sentence on the outside, it is true, and if he serves it without violation of parole his sentence will come to an end and that will be that. If he intends to commit offences or if he does commit offences, then I do not have any particular sympathy for him whatsoever. He was placed on parole on the understanding that he would not commit any offences, and he was under no obligation to accept parole. He has nothing to fear from parole if he does not intend to break the law. We are trying to find people who do not intend to break the

law. I think it is necessary to have the deterrent effect of knowing that if he does break the law he will go back and serve the two years, which you quoted in your example, or whatever the term is. As I said, that is a bit longer than average. Surely it is not asking too much of a man to say, "Don't break the law". That is whole idea of the system. If he intends to break the law, then he had better not apply for parole.

Senator Hastings: You do agree that a man is serving time on the street.

Mr. Street: Oh yes. It clearly says that he is serving his sentence. As long as he serves it without violation or without committing another offence it will come to an end as soon as the term is finished. I think it desirable and necessary for the protection of the public to have more control over more criminals, preferably control outside, and this is the only way we can establish it now, together with probation.

As I said, I think prison should be a last resort, and only if no other means of treatment or control is suitable or available. It is very important that people come out of prison under parole, so that they can be helped with their problems and at the same time supervised to see that they do not commit offences. The whole name of the game is "Don't break the law. If you are going to break the law, don't come and see me, I am not interested in you." We are interested in helping those who want to help themselves. If a man is going to break the law he should not be out in the first place, and he should go back for quite a long time. Prison should be reserved for those people who are a menace to society and cannot be controlled or treated in any other way. If they are incorrigible or a menace to society, I am afraid they will have to stay in prison, because we do not know what else to do with them.

Senator Williams: I have listened very carefully to the answers that have been given, but I would like to go back a bit and refer to the six or eight Indians who are employed as part of the personnel. Were these people appointed or did they get on to the board in the normal way, through competition? Did they have to fill in applications or were they appointees? Do they have qualifications?

Mr. Street: They did not have the same qualifications as our other officers. This was a special class designed to get some Indian people on our organization. We picked, I think, 20, who were given a special course at Kingston. Some of those who completed the course were put into the Penitentiaries branch and others were put into our organization.

Senator Williams: The status Indian population of Canada is less than one per cent of the total population of the country, and the high population in the institutions, possibly around 40 per cent, is of great concern, not only to myself but to the Indian people and to this country. Why is it so high? From my own observation, the Indian is not criminally inclined. Is the reason this figure is so high because of his educational standard, his environment and his lack of knowledge of this society? I believe the day has come when there must be some form of, shall I say, special consideration or added personnel to accommodate him and make known to him his rights in prison. It appears to

me that he is not getting enough knowledge, or he seems to be in a state of inaction or in a vacuum, so that he is not really applying for parole. The 40 per cent-plus figure is of real concern to me.

Mr. Street: Yes, and it is of real concern to me. I do not know why there are so many of them there. Certainly we do the best we can to try to help them, tell them about parole and so on. They are not easy cases to look after. I do not know what the answer is. However, I do know this—and I am not talking only of Indians but about everybody—when somebody ends up in a federal penitentiary it is because every influence that is good in our life has failed with him—his family, his church, his school, the YMCA and all the other things that we have got going for us; he has probably been on probation, maybe at a reformatory and so on. He ends up in a federal prison, and we are supposed magically to reform him. Well, it just does not work that way. Not much magical reformation takes place in a prison, even though they have a lot of good programs, dedicated people working hard and so on. The penitentiaries get them after everybody else in society has failed, especially the family, for instance, which is one of the most important influences. I do not know what the answer to this is. It is not easy. This applies to everyone, not only Indians.

Senator Williams: The incidence of those ending up in penitentiaries is far too high when you consider their total numbers in the country. Some while ago Mr. Stevenson referred to my friend Bill Mussells. He is a social worker and has a degree. However, he did not stay long in the service; he moved out. He was an ambitious young man and he became an executive assistant to the Minister of Indian Affairs. There are other young Indians who are going to university; possibly two or three of them are taking sociology. These are the young people who are needed.

Mr. Street: We would like to get them. We were very sorry to lose Bill Mussells; he was a good officer, and it was easier for him to talk to other Indians than for our other people. We would like to get some of these other young men. In order to get them we have lowered our standards and have a special training course for them. I said we have six or eight; it turns out that it is nine of these men, who are with us now, and even though they do not have the same qualifications as others we got them fitted in anyway.

Senator Williams: I know one who is graduating this year from the University of British Columbia in sociology. I think he would be a good person to have.

Mr. Street: We would like to have him.

Senator Buckwold: I should like to have clarification of the figure of 40 per cent of inmates in prison being Indians. Could I have that clarified? You say that is 40 per cent in Western Canada?

Senator Hastings: The western provinces.

Senator Buckwold: Your percentage does not relate to the national total. What percentage of prisoners in the penitentiaries are Indians? I would think it would be considerably less, that most of the Indian crimes are really not what we

would call serious criminal offences; they are going into the provincial jails and so on. Is there a statistic on that?

Senator Hastings: The statistics are about the same.

Senator Buckwold: Is it that high?

Mr. Stevenson: I think the Commissioner of Penitentiaries could answer that. I think it is approximately the same in the western provinces.

Senator Buckwold: In the federal penitentiaries?

Mr. Stevenson: Yes.

Senator Thompson: I would like to clear up two points, Mr. Chairman, with Mr. Street. Has the Parole Board established special arrangements with any police force for the supervision of parolees?

Mr. Street: Oh, yes. We have liaison with them at all levels, so that they know who is on parole and so on. If you mean, do they actually do this supervision for us, I would say no, not very often, except in out-of-the-way places where they are the only people available. They do not do supervision in big cities.

Senator Thompson: As far as the categories of offences are concerned, drug addicts or bank robberies, is there any special arrangement with a police force with respect to offenders?

Mr. Street: Yes, there is, but they would not do the actual supervision. They would be more concerned with watching them and the other parolees and reporting to us if they saw a man at a place he should not be, or out late at night, or in the company of another criminal. Yes, there is some police force work in that direction.

Mr. Stevenson: May I just answer a little further? Are you aware, senator, that in the case of almost every parolee, one of his conditions is to report to the police at least once or twice each month, and that that reporting is perhaps reduced as he goes along?

Senator Thompson: Thank you. I was following on Senator Haig's question in connection with the right to apply for parole. Have there been cases in any situation where an institution has not respected this right and has prevented an application for parole?

Mr. Street: Certainly not that I know of. I do not suppose prisoners have too many rights, but they clearly have the right to apply for parole and have their case considered. I do not know of any institution where it has been otherwise, and if I had known I would have done something about it. The prisoner certainly has the right to apply and the right to have his case considered, and it would be quite improper for any prison director or anyone else to stop him sending an application to the National Parole Board.

Senator Hastings: Or making a decision on your behalf?

Mr. Street: He cannot make a decision on our behalf; no one can. He certainly has the right to apply.

Senator Hastings: May I return to the Indian problem? I know it was interesting, that Mr. Stevenson said something to the effect that "We are doing everything possible," and

"We were trying our best." Then Mr. Street mentioned a few moments ago that, "We are trying to do the best we can with this problem."

I have been attending some of these Native Brotherhood meetings in the penitentiary and they are quite vociferous in telling me that I, as a white man, just cannot understand or appreciate their particular problems.

I am wondering if they may not be quite right, in view of the efforts we have been putting forward, that we are now about ready to admit that we are incapable of solving the problem for them, and perhaps the time is ripe to grant some authority to organizations such as Senator Thompson mentioned, or Native Brotherhood organizations, to assume this undertaking.

Mr. Street: Do you mean, to grant parole, or to undertake to make them understand our position? I do not see what you mean.

Senator Hastings: Supervision, and their responsibilities.

Mr. Street: We will do anything. I do not have the answers to this. I am just saying that we are doing the best we can. We have not got the answer to this problem, but our officers keep in touch with the native councils, bands and reservations, chiefs and managers, and so on, and are trying to have liaison with them and to get them to do the supervision; and the Indian agents and the Brotherhood people you are speaking of, we know about them anyway. I do not know the answer.

Senator Hastings: Mr. Maccagno, would you care to comment on this matter, with your experience?

Mr. Maccagno: We can comment, but then we are at loggerheads here, for the simple reason that we know that in the northern parts of Alberta, something like 20 per cent of the population, if my figures are still correct, are people of native ancestry. In the penitentiaries, in the jails, about 40 per cent of the inmates are of native ancestry. That is alarming; that is a problem. But let us not forget one thing, that it is not the Parole Board who put them there. If you want to follow that line, that is beyond my realm of jurisdiction. Do you use the same yardstick when you have the natives before you in the court? I do not know. But start from there.

Let us get one fact straight, it is the native population, which is 20 per cent of the total, which comprises 40 per cent of the population in the penitentiaries or the jails. It is not the parole board that did that. We are faced with the problem that comes before us, and there is no question about it. I have been with practically all of the panel members and regardless of what they say, we would lean over backwards to help them, but we are not doing such a good job. When I say that, I mean that for every one of us, right across Canada. I would also say that we are doing our very best. But we need to follow it through, too.

My statistics point out something else which is very alarming. We have paroled them, but they violate and come back. What is wrong? We parole them a second time and they come right back. I am going to tell you that pretty soon, when they come up before us the third time, we are not doing them any favour. We do not know what to do. Where do we go from there? The moment we deny them

parole, there is said to be discrimination, and that is the furthest thing from my mind. We would never want to be tagged with discrimination, because we would like to help. But when we are talking about that problem, it is a problem right across Canada, so let us get the facts straight. We can only deal with one part of it. We did not put them in.

The Chairman: Have you any idea as to why it is that they violate the parole? Is it lack of supervision? Is it improper supervision? Can you comment on that, or have you any ideas that would help us?

Mr. Maccagno: There are lots of ideas. We have been working on this problem for so many years. There are so many books written and so many studies made. I suppose if we ever got hold of one that would give us the answer, we would use it. We will have to go on to many areas here. Supervision is one. There may be more. One important part, to my thinking, is job opportunity. When the men are out there doing nothing and there is no revenue coming in and they have a family to support, that is a problem. The employment is mainly seasonal. That type of employment at one time was all right, but it is not there any more. The seasonal employment was a wonderful thing, as they could go trapping and make a little money and come back to the family. They could do a little bush work and come back again. Then they could do a little fishing and come back. It was all seasonal.

I cannot talk much of British Columbia, but in the area of Alberta, Saskatchewan and Manitoba the trapping is gone, there is no more living to be made there. The commercial fishing is just about shot, there is nothing there. These are the areas in which those people like to work. I can only expound on the things that you have already heard me talk about. There are many areas in the north in which they could be employed. If you want me to make a speech I can go ahead with it. As far as I am concerned, I am always looking forward to a program under which we can place these people doing useful work, in the areas that are home to them, and in the type of work that they like. When you come to the type of work, you get into forestry, into fishing, into the stocking of lakes, and so on and so forth. They can do a wonderful job. But we talk about those things and we never do them.

Senator Hastings: Would native parole officers help, or having a native on the parole board?

Mr. Maccagno: Yes and no. In certain areas, we find that they have done well for a while. Then I do not know what happens, they seem to fail and say, "You are a white man". There you are. We have tried them. We have some good officers and we are very proud of them, but if asked whether it has proved completely successful, I would have to hesitate in answering positively.

Senator Hastings: Would you care to comment on the suggestion by the warden of Fort Saskatchewan that a native institution be established, controlling its own affairs?

Mr. Maccagno: I spent almost half a day with him, as I wanted to know exactly what he meant because of a fear I had. He explained that a number of the natives entering Fort Saskatchewan Jail find some of the living conditions there—such as running water, central heating, and so on—

are better than they had at home, and my fear was that he was suggesting construction of some kind of "shack out-fit" for the natives—which would be terrible. He assured me that this was not what he had in mind at all. He spoke about many of the things I had often advocated—finding employment in the areas of forestry, reforestation, oil exploration, fishing, et cetera.

For instance, practically all our lakes and rivers could do with re-stocking, and the natives would be really good at this type of program. This is the type of plan that he is advocating, and I have to agree in this respect. In the area of any proposed segregation, and a special institution for natives only, such a plan would need careful study. After all, they still will have to live in our society.

The Chairman: If I may point out, one of the reasons Mr. Maccagno is here is that the suggestion arose that he would have some figures to give us on how much time was spent on these different things. I believe Senator Hastings was asking that question.

Senator Hastings: Yes. We understood, Mr. Maccagno, that you kept excellent records with regard to the time the inmate is before you. Could you give us some idea, on average, of how much time the man is actually before the board?

Mr. Maccagno: Yes. When I go on a panel I start keeping track of the time from the moment the inmate comes in. Just using an example to break it down for you, when we were at Drumheller an inmate came in at 2.10. We discussed his case until 2.20 with the classification and parole officer. We discussed the case between us.

Senator Hastings: Without the inmate being before you, you mean.

Mr. Maccagno: Yes. Then we called the inmate in before us at 2.20 and he was with us for 15 minutes. That is a total of 25 minutes. Happily, he got a parole so he was very satisfied.

Sometimes we have gone as high as an hour. It all depends on the particular case. On average it seems to go about 20 or 25 minutes, and that pretty well covers the matter.

We had an interesting case the other day. The inmate stated that we had seen him two years before but had not been prepared to listen to him and gave him the brush-off. As it happened, I had been one of the panel on the previous occasion two years before and I was able to say, "Well, I don't know. I was there."—and he suddenly realized that I was. I said, "You came in at 9.45." He said, "yes." I said, "You went out at 10.40. That is hardly a brush-off." So these figures have come in very handy at times.

Senator Hastings: There is one complaint that is made quite often which I would like to put to you simply to have your answer on record. The complaint is that you make a decision before you ever arrive at the institution.

Mr. Maccagno: That is absolutely untrue. It becomes kind of disgusting even to think of that. Really, I am amazed, because sometimes, as Mr. Stevenson just told you—and I was with him on that particular case—we just struggle with a decision because there are so many factors that are

positive and so many that are negative. In that particular case we wanted to use all the positive factors as well as the negative factors. So we even called the inmate in and our words to him were, "Look, you are sweating it out out there and we are sweating it out in here. Let us join together and see what we can do." Fortunately, we were able to get him out.

Senator Hastings: I concur with your answer. I simply wanted that on record. Would you care to comment on that yourself, Mr. Stevenson?

Mr. Stevenson: In no way do we make decisions beforehand. We may, from looking at a file, have a feeling that an inmate is an easy case and is going to make it, or that it is going to be a deferral or a denial, but things can change once the hearing starts. If the inmate presents himself well and gets a lot of support we may very well feel, "Well, let us give him a chance."

Senator Buckwold: Mr. Street, would the Parole Board have any objection to, say, two senators from this committee some time sitting in on a hearing of the Parole Board for a day?

Mr. Street: No. We would not have any objection. On the contrary, we would be very glad.

Senator Buckwold: It would simply be for the sake of observing the process. I assume no offence would be taken by the applicants?

Mr. Maccagno: Well, it is the inmate's day. We would have to ask him if he had any objection, and if he did, then, of course, it is his day.

Senator Buckwold: I understand that. It occurred to me that it might be useful if one or two senators could be present. I was not thinking in terms of the whole committee. I was thinking of only one or two senators at one or two of the hearings, spending a morning listening to three or four of the applications in order to find out what the process is and to get the feel of it.

Mr. Street: I think that could be arranged quite easily, senator. Our policy would be, as Mr. Maccagno has said, that the inmate would have to make the decision. If he objected, then it would be out. I think an arrangement could be made at Kingston, which is the closest place, although sometimes we do have hearings in Ottawa.

The Chairman: Perhaps we could find out later which senators would like to attend such hearings. We will be meeting with Mr. Street fairly regularly, so we can work out arrangements through him as a liaison. Obviously, as Mr. Maccagno has pointed out, the prisoner would have to agree, otherwise he might feel that his position had been prejudiced in some way.

Senator Thompson: Mr. Street, you people seem to be researchers, public relations officers, case workers and I do not know what else. But in respect of statistics, what are the facilities for research? Could a list of the research that has been done be made available to us? I realize that whatever research is done is probably done by universities and other institutions, but no doubt it is promoted by you. We would find it quite helpful to have such a list of all the

statistics that you are working on. What I am particularly interested in is the field workers. I am sure that in their kind of supervision they are keeping some kind of statistics.

Mr. Maccagno: I must point out that we are not in the business of keeping statistics. As I mentioned before, I am a relatively new member of the Board. My family happens to be still out in Alberta so that I am alone here in Ottawa. Because of that I like to do the type of thing that I love doing. Some people like to play golf. After my work is done I love dabbling in statistics, because I like to find out for myself where I am going and what I am doing. I like to know with which panel I work the best, and so on and so forth. These are just personal statistics, therefore.

Senator Thompson: I realize that, sir, and I was wondering, generalizing from that, if Mr. Street could tell us if this was done on a general basis or if it was just one man's personal observations.

Mr. Street: Mr. Maccagno's statistics are his own personal statistics, as he has just explained, but we do have other statistics which you are welcome to at any time. There are certain research projects which have been done in the department on our behalf, and you are certainly welcome to them.

Senator Thompson: We would appreciate seeing those, and perhaps any statistics that you might have showing projections for your research work.

Mr. Street: We have some detailed statistics that we publish. It usually takes about a year to get them out. They are very detailed statistics, and I think we have given them to you. They deal with paroles from different institutions and there are about 50 different tables in that one book. Of course, we will give you anything you want, plus the projects that have been done.

Senator Thompson: Do you have a research director and do you have a budget for him?

Mr. Street: No, we do not. We have a statistician, but I do not know what her grade is. In fact, she is not really a statistician or a research person; she looks after our figures. But then there is somebody in the deputy's office in the department who is concerned with that data and who is supposed to give us more sophisticated and more refined statistics.

Senator Thompson: Do you have a research budget?

Mr. Street: No, but the department does. We have access to the research projects in the department. What I need at the moment is some expert in research to read and analyse all the research we have just now. He could explain to us what it is all about. Some of the books are very thick, but I dare say that in ten minutes a good researcher could tell you and me what we want to know.

Senator Thompson: Do you see it as being a help to you if you had a research person who could translate this research that is piling up?

Mr. Street: I certainly do.

Senator Thompson: And would you prefer to have this within your department, or simply to have a budget so that

you could farm it out to people who would do it for you, in universities and places like that?

Mr. Street: Well, we have access to having it farmed out, but we could very well use a research man in our own organization. What we need in the whole department is somebody to analyse the research that has already been done instead of going out and doing still more research. We would like to have somebody who could analyse, index and classify the research already done. We are spending more and more money to get more and more research when what we need is to have an analysis of what we already have.

Senator Hastings: I notice there has been an appreciable decrease in reserved decisions in December. Is there any particular reason for that?

Mr. Street: No, there is not.

Senator Hastings: Just one other question, Mr. Chairman. Why is the meeting tomorrow in which we are going to deal with decision-making to be held *in camera*?

The Chairman: The reason is that Mr. Miller is going to discuss with us actual cases. He will be giving us the names, the background and all the information connected with a particular case. While it is true that he need not reveal the name, by the time he has given us all the information available, the person concerned would be readily identifiable. I think this will give us a better idea of how the board works than anything else. He also has suggested that when he gives you all the information the committee can then sit as a board and reach a conclusion on a particular case and then we will see whether our conclusion is the same as that reached by the board. I think this will indicate to you that it will probably be much more useful if we do that in a cozy corner here than if we were to do it on the front lawn, and I am not merely referring to weather conditions.

Senator Hastings: I have just one further brief question for Mr. Street. It concerns "lifers," and the mandatory ten-year term before you can consider granting them parole. Do you not agree that some "lifers" would be eligible for parole, and are they not being unduly punished as a result of this provision?

The Chairman: That is a leading question.

Mr. Street: Before that ten-year term came in we used to parole people in exceptionally deserving cases after six or seven years. At that time we had power to do it, but now

we do not. The Ouimet Committee Report recommended this also.

Senator Hastings: Have you ever paroled a capital offender under the provisions of the parole by exception?

Mr. Street: Yes. We cannot do that now but we used to parole them before ten years, sometimes up to six or seven years. However, this was before the law was changed.

Senator Hastings: Would this be, let us say, as low as three and one-half years?

Mr. Street: Did we ever go as low as three and one-half years?

Mr. Miller: Before the days of the Parole board, people were paroled as low as three and one-half years. I was active in a case under this provision; and in the data which was given to the parliamentary committee on capital punishment there was a list of around 70 cases of people who received sentences of ten years, and I think the lowest term of parole which was granted was about three and one-half years. There were ten cases in the group under ten years. This, however, is before the period of the Parole Board.

Senator Hastings: Do you mean before 1959?

Mr. Street: Yes. We used to do this.

Mr. Miller: For those prisoners who were on a seven-year term, there may have been some since 1959 as low as three and one-half years.

Senator Hastings: I am acquainted with one particular individual at three and one-half years who is doing exceptionally well. I was wondering how many would go that low. In some cases, it is an indication they are quite ready for parole in three and one-half years.

The Chairman: It is now after 12:30. Are you satisfied with the information we have obtained from Mr. Street and his colleagues at the moment?

Senator Hastings: Yes, subject to recall.

The Chairman: Yes, he will be available if we need him.

I thank Mr. Street and the members of his staff who are present for their help this morning and on previous occasions, as well as during the time which has passed between our meetings. Thank you very much indeed.

The committee adjourned.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 2

WEDNESDAY, MARCH 8, 1972

Fourth Proceedings on the examination of
the parole system in Canada

(Witnesses and Appendices—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue, H.	Hayden, S. A.
Buckwold, S. L.	Lair, K.
Burchill, G. P.	Lang, D.
Choquette, L.	Langlois, L.
Connolly, J. J. (<i>Ottawa West</i>)	Macdonald, J. M.
Croll, D. A.	*Martin, P.
Eudes, R.	McGrand, F. A.
Everett, D. D.	Prowse, J. H.
Fergusson, M. McQ.	Quart, J. D.
*Flynn, J.	Sullivan, J. A.
Fournier, S.	Thompson, A. E.
(<i>de Lanaudière</i>)	Walker, D. J.
Goldenberg, C.	White, G. S.
Gouin, L. M.	Williams, G.
Haig, J. C.	Willis, H. A.
Hastings, E. A.	Yuzyk, P.—30

*Ex officio members: Flynn and Martin.

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, March 8, 1972.

(4)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Prowse (*Chairman*), Argue, Buckwold, Fergusson, Fournier, Goldenberg, Hastings and Hayden.
(8)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Réal Jubinville, Executive Director; Mr. Patrick Doherty and Mr. William Earl Bailey, Special Research Assistants.

The Committee proceeded to the examination of the parole system in Canada.

The following witnesses, representing the Canadian Penitentiary Service, Department of the Solicitor General, were heard in explanation of the Committee's examination:

Mr. P. A. Faguy, Commissioner;

Mr. J. W. Braithwaite, Associate Deputy Commissioner.

The following were also present but were not heard:

Mr. H. F. Smith, Director, Treatment and Training;

Mr. J. R. G. Surprenant, Chief, Secretariat.

On Motion of the Honourable Senator Hastings it was Resolved to include the Brief presented by Mr. Faguy and the Statistics submitted by the Canadian Penitentiary Service in this day's proceedings. They are printed as appendices under the following titles:

Appendix "A"

"A presentation to the Standing Senate Committee on Legal and Constitutional Affairs"

Appendix "B"

"Temporary Absences"

Appendix "C"

"Report on Inmates Serving Life, Indefinite Sentences or Classified as Dangerous Sexual Offenders"

Appendix "D"

"Institutions and Inmate Population"

Appendix "E"

"Indians and the Canadian Penitentiary Service"

Appendix "F"

"Number of Psychiatrists Now Working in Canadian Penitentiary Service"

Appendix "G"

"Average Maintenance Cost per Inmate by Security Type, Based on Actual Expenditures"

At 12.35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, March 8, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Mr. P. A. Faguy, Commissioner, Canadian Penitentiary Service, and sitting beside Mr. Faguy is Mr. J. W. Braithwaite, Associate Deputy Commissioner. I assume the brief has been read.

Senator Hastings: I move that the brief be printed as part of the proceedings.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

For text of brief, see Appendix "A".

The Chairman: Do you wish to make an additional statement?

Mr. P. A. Faguy, Commissioner, Canadian Penitentiary Service: No, I have no additional statement, Mr. Chairman, to those contained in the brief.

The Chairman: Then we can begin the questioning, Senator Hastings.

Senator Hastings: Thank you, Mr. Chairman. On behalf of the committee I would like to welcome Mr. Faguy to our deliberations. My first question, naturally, Mr. Faguy, will deal with temporary absence.

Mr. Faguy: I wonder why?

Senator Hastings: May I make an observation before asking my question? I believe the temporary absence program to be one of the more enlightened progressive procedures undertaken by your service in a long time. I can think of nothing that makes a better contribution to the rehabilitation process of a man than the procedure of temporary absence, which maintains his contact with his family and society and makes incarceration bearable. I think it is important that we understand that, as we adopt these enlightened reforms in

penal treatment, a risk is always involved. So long as we adopt these risks, we must be prepared to accept failure, in the knowledge of the overall success of your program. When we confer the authority on your officials to assume these risks we, in society, must be prepared to accept the failure, in the knowledge and understanding that so long as man is judging man failures will occur. So I personally am a supporter of you and your service in respect to the granting of temporary absence.

It is stated at page 7 of the brief that in 1969, 6,278 passes were granted. Would these range from a three-hour to a 15-day pass?

Mr. Faguy: That is right. These absences vary in time allowed outside the penitentiary. The average is approximately two to three days, but it can be as long as 15 days, which we have the authority to grant under the Penitentiary Act.

Senator Hastings: Do the figures include escorted and unescorted passes?

Mr. Faguy: Yes. Some are with escort, but the majority of the temporary absences shown here are without escort.

Senator Hastings: It is further stated that the failure rate is less than 1 per cent.

Mr. Faguy: That is right. Let me put it this way, senator: the success rate is 99 per cent.

Senator Hastings: Would you care to tell me, of the 300 failures how many committed indictable offences while on temporary absence?

Mr. Faguy: Yes, I have some information in this respect. Does your question relate to inmates serving life sentences?

Senator Hastings: No, inmates in general. No doubt, someone else will discuss those serving life.

Mr. Faguy: From September to December, 1971, during which period there were 12,401 temporary absences granted, the failure to return was less than 1 per cent. I have the figures broken down by region, if you so wish. In fact, I have a mass of statistics on temporary absences in this document, which I can leave with the committee for record purposes. I believe it would serve very useful and practical purposes if you wish to analyze the returns.

In any event, they represent rates from 1.2 per cent, down to 0.73 per cent, 0.64 per cent or 0.46 per cent, for instance, of failure to return in November.

The number of known crimes committed while on temporary absence for the period September to December 1971, which is a heavy period as you know, was 15. They are detailed by regions in this document. They are robbery, forgery, break and enter, discharging a dangerous weapon, drunkenness, impaired driving and robbery with violence. We can provide the number and the regions where these incidents occurred. This information is available in the document we have placed on record. It is only 15 out of 12,401 who were allowed out.

Senator Hastings: It is interesting to note that your failure rate of 1 per cent runs approximately the same, as any bank manager will tell you, as that of those among the general public who will not keep their word, which is also approximately 1 per cent. So the people you are dealing with are not very different from the general public, are they?

Mr. Faguy: That is right, yet people do expect them to be different. They expect the rate to be much worse, yet our experience shows that it has been continually less than one per cent. We consider this to be a resounding success, because we are sending these people out and asking them to be responsible to take the decision to come back in, which they do.

Senator Hastings: We can be human, but we expect them to be saints.

Mr. Faguy: Yes, they are also human, let us face it.

Senator Hastings: I was at Millhaven institute last week and was surprised to see that men were being taken from the institution in prison attire on temporary absence downtown in front of the public, to visit the doctor and so on. I questioned the procedure and was told that they go to court dressed in civilian suits, but you insist on their being dressed in prison attire to be paraded before the public. Is this not a rather strange procedure?

Mr. Faguy: Mr. Chairman, I will also express surprise. However, what do you term prison attire? As you know, inmates are now allowed to use different clothing, with no number. I wonder what exactly you mean by prison attire?

Senator Hastings: I mean that attire which easily distinguishes them to the public as inmates. It is the grey uniform they wear.

Mr. Faguy: I would like to check that, because I am surprised that they are sent out of prison in prison attire, as you call it.

Senator Hastings: I was told that the only time they are given civilian clothing is to appear in court. I cannot imagine why it is more important to appear in court in civilian dress than it is in a doctor's office or a hospital. Can we be assured that this will be changed?

Mr. Faguy: I can assure you that instructions will be given to change.

Senator Fergusson: I wonder how long you will continue the severe cut-backs made recently concerning those who are allowed temporary absence? I know of such cases, for instance, as that of a woman who was working and doing very well. When the new regulations came into effect recently, she was cut back. I know of some others who were doing voluntary service in the community. They were also cut back and not allowed to continue. This is very discouraging for such people. I realize your position, but I have considerable sympathy for those who are terribly disappointed and who could become discouraged. Do you expect to continue this policy?

Mr. Faguy: I would not venture at this moment to state a specific period of time, because of the current well-known incident and the effect on public reaction. After very serious consideration, we decided to apply these new guidelines and restrictions to new inmates.

The Chairman: What are they? Could you set them out for the record?

Mr. Faguy: We say that temporary leave without escort will not be considered until at least six months of sentence has been served, except in cases of those serving life sentences, such as habitual criminals, those classified as dangerous sexual offenders, and people known by police to have connections with organized crime. Three years of sentence must be served before they are eligible for temporary leave with escort.

We are saying that all inmates must have served a minimum of six months in a federal penitentiary. This allows sufficient time for us to get to know the inmate, to appraise and evaluate him, and to discuss with him his individual problems and needs. We think that six months is necessary for us to know him well enough to decide whether or not we should allow him temporary leave.

In the other cases we have said three years. We could have said five or 10. Other correctional services have said 10. In Europe, Australia and other places they consider five years as a minimum. We have set a period of three years for those serving a life sentence, who are considered habitual criminals or sexual offenders, or who have a known connection with organized crime. These are serious problems deserving very careful attention, and should be studied over a substantial period of time. We consider three years to be the minimum period of time.

I realize that this creates some problems. We have cases where the people in the field, such as the John Howard Society and the Elizabeth Fry Society, have said to me, "Mr. Faguy, we understand, but we would like Miss So-and-so or Mrs. So-and-so to be allowed to go." We feel, however, that we should stick to these guidelines at least for the time being. We have asked our people to keep track of these cases. I shall be receiving periodical reports, and eventually I may be able to issue different guidelines.

The Chairman: Senator Buckwold, did you wish to ask a question?

Senator Buckwold: I wish to direct several questions to the Commissioner. Mr. Faguy, it seems that in the first part of your remarks—

The Chairman: Are we still on the subject of temporary absence?

Senator Buckwold: No.

Senator Hastings: Mr. Faguy, I wish to place on record the temporary absence which you granted a lifer from Drumheller, Alberta, who attended the National Conference on Law. He went unescorted to Ottawa, attended the conference, and returned to Drumheller without incident. The public should be aware of the cases where you are succeeding and making a real contribution to the rehabilitation of lifers.

Mr. Faguy: I can assure you that this was one real success case where the man participated in the conference at a high level and did very well. We were complimented for it, and I appreciated that. There are many lifers who participate in programs very successfully.

Senator Buckwold: Speaking personally and for many of my colleagues, I hope that the opinions expressed by Senator Hastings will be carefully considered. One very bad incident should not be allowed to prejudice seriously a very enlightened program.

We are looking at the parole system. We are not studying the prison system, although at times it is difficult to differentiate between them. The most significant point that you have made is that you feel there should be a unified correctional policy and programs, which is understandable, but that there should be administrative union between the Canadian Penitentiary Service and the National Parole Service; that they should, in fact, operate under one director rather than under two, with one quasi-judicial authority.

That is a key point in your submission. Some of us need to be convinced that it would be wise to place the whole thing within the prison system. For example, would the inmate be as responsive to a parole officer who was part of the prison system as to one who was completely separate? Would there be independence of thought and action? We would want to know exactly how this would work.

You have said that there would be increased potential towards more effective use of staff and improved career planning. Does that mean that a fellow might be a probation officer, move into the position of assessment officer, and then perhaps move back? If this happens, how can he escape the normal attitudes which exist among people connected with police services, despite the fact the person concerned might wish to be objective? Could you develop that aspect in more detail? I should like to know why we have the present system. Although you have given us examples of an integrated system, I gather from what you have said that most parole boards operate independently. Could we have a fairly detailed assessment of the whole proposition?

Mr. Faguy: Having visited the Scandinavian countries, Holland, some parts of the United States, and the provinces, to my knowl-

edge in most area there is a combined, unified service. I do not know what the percentage would be throughout the world.

I should like, however, to comment on the statement expressed to the effect that the parole service was becoming part of the system. I would react very strongly against that kind of statement. I feel there should be within a unified correctional system two main divisions, namely, the penitentiary service and the parole service under the same authority and providing the same services, et cetera. In this way we could have a uniform co-ordinating plan and policy throughout, and, as you mentioned, better career planning as far as our employees are concerned.

I feel it would be extremely beneficial to have interchange between the parole service staff and the penitentiaries staff in that they would learn what it is like on the other side and what is needed. In my opinion, it would be extremely useful for parole officers to work within the penitentiaries for a period of time so that they could better appreciate the problems of the inmates, how the inmates feel, what the needs of the inmates are, et cetera. The main concern all the way through, of course, is the inmate, and his needs have to be the basic criterion for our programs. We are not there to create programs for our purposes; it is the needs of the inmate that direct our programs.

By having two main advisers at national headquarters, one dealing with the penitentiary aspect and the other with the parole aspect, we could retain the independence of thought and yet have a unified service. I hope another result of this would be that we would have more and more parole officers becoming directors of institutions, thereby bringing their knowledge of the outside as well as their knowledge of the needs of the inmates as a result of their period of penitentiary service to the problems of the penitentiaries, and possibly becoming correctional administrators, as is happening now with some of our people. I would think that by the interchange of personnel in this way we could avoid the possibility of the penitentiary staff developing a hard attitude towards life within the penitentiary walls.

To summarize then, you would have a continuing appraisal of inmate needs, a better career plan; a unified direction, a unified policy, one tying into the other; you would have the parole officers and penitentiary people working closely, hopefully from the time of entry into the penitentiary through to release on parole. In other words, we would have a joint planning, joint study and joint decision-making process with respect to the inmates.

Senator Buckwold: Do you really believe that system will work? Do you really feel that a man who is hired basically as a parole officer could become an efficient member of the penitentiary staff? I am not suggesting that the training would necessarily have to be all that different, but the personality of the individual, I should think, becomes a factor in the ability to handle two jobs which are integrated but which have different approaches. Personally, I would want to be convinced that this would work. What would the reaction of the prisoner be in this regard? Do you think that he would co-operate better or be more at ease with someone who may have previously been part of the system but who is now a parole officer?

Mr. Faguy: Some members of our staff at the present time have been in services other than the Penitentiary Service. Some of the directors just nominated, in fact, are sociologists and criminologists. We have also qualified for directorships at least one member of the Parole Service, and I think he will be a most suitable person to become a director. In fact, we hope to have a mix of professional and hard core experienced people working together so that our study of the inmate is complete as well as our understanding of the inmate, and our decision with respect to the inmate is a logical one, keeping in mind our knowledge of the inside as well as the outside. The best correctional administrator would be an individual with professional qualifications and background who also happens to be a good administrator by temperament. This would be the ideal combination.

Senator Hastings: And who has done time.

Mr. Faguy: We have not quite reached that stage yet, senators.

Mr. J. W. Braithwaite, Associate Deputy Commissioner, Canadian Penitentiary Service: Most of them feel they have done time.

Senator Buckwold: One last question; and I think this should be explored a little further. In my experience the so-called senior police administrator—one who has had some experience in a small city as chairman of a board, police commissioner, or this type of thing—develops, no matter how objectively the individual tries to be, a police mentality, and even people who you might say are enlightened, when you get them down to the thinking of the chief of police or something like that, the police mentality always seems to come through. My question is: Will you be able to prevent a parole officer from developing the police mentality?

Mr. Faguy: Your point is an excellent one, senator, and we would hope a unified service would prevent a penitentiary officer always being a penitentiary officer, and this also applies to the parole officer who is only—and I do not mean this facetiously—a parole officer. In other words, we hope they become both and are knowledgeable with respect to both services. If this were the case we would have—I was going to say the complete man, but I do not suppose there is such an individual—but you would have, as far as I am concerned, an individual who knows both sides and is capable of moving back and forth. I feel this would be of extreme value in preventing what you are referring to, and this happens now with our own people inside the institutions whether we like it or not.

The Chairman: Senator Hastings, do you have a question?

Senator Hastings: Mr. Faguy, you spoke earlier of the needs of the inmates. One of the major complaints of the inmates in this respect is that his only exposure to the Parole Service is the week he arrives. In other words, his first exposure to the Parole Service, apart from a short briefing with other inmates, is a short interview before he goes before the Parole Board for his hearing. Because of this it is quite conceivable and, in fact, quite common that his activities within the institution have been completely misdirected. Certainly, it seems necessary, in dealing with the whole man, that there be input through the whole period from the court to the Parole Board hearing. I gather that is your objective.

Mr. Faguy: Yes.

Senator Hastings: This was recommended in 1967, I believe; it seems to be moving rather slowly.

Mr. Faguy: Yes, and we hope we will finally make it happen. We get advice from everyone in Canada with respect to correctional administration, but the fact is that we want a better system and we hope to achieve this.

Senator Hastings: Perhaps we will assist you materially in that respect.

Senator Goldenberg: Mr. Faguy, would you tell us the criterion for the granting of temporary absences? Could you give us an example or examples of what you call humanitarian reasons and rehabilitative reasons?

Mr. Faguy: A directive was sent to the various institutions clearly defining the conditions under which an inmate can be released. These reasons are outlined in the report which we will make available to the committee. There are such reasons as: visiting a wife, family, or friends; leaves for university education—by the way, approximately 50 per cent of our extended temporary absences are either for work or educational purposes; specialized programs such as Alcoholics Anonymous meetings; the Native Brotherhood for the Indians; religious services—we do have some of those activities—work release; job seeking. We have some also for sports activities, where they participate themselves, or sometimes for spectators, like most Canadians are. Other reasons are family and marriages—as we know—family anniversaries, death in the family, other special family occasions; medical attention or psychiatric treatment. These are the type of reasons we have. In the report you will find the number given for each month, September to December 1971.

Senator Goldenberg: Would there be additional reasons, where the release is for more than three days? That is not within the discretion of the warden, I understand.

Mr. Faguy: No. For more than three days it must come through Ottawa. Then we look for, for instance, work release programs. We know that they need to be out for more than three days. We arrange a grant for these people of 15 days at a time, to go out and work in the community.

The Chairman: This is repeatable?

Mr. Faguy: Yes, it is. We repeat these 15-day temporary absences from time to time, as we call them, “back to back,” and this policy, I think, is to be reviewed.

Senator Hastings: Can they report by postcard?

Mr. Faguy: No. Usually in the community we know where they are, what they are doing, and we keep an eye on them. We know very well where they are going. Even though they are without an escort, we know what is going on, and employers are pretty quick to advise us if any problem arises.

Mr. Braithwaite would like to add something to that.

Mr. Braithwaite: Honourable senators, I thought it might be helpful to you to consider a typical day in relation to temporary absences. For example, the day we chose was November 30, 1971. On that day, we had a total of 283 men in the community on temporary absence. Of that number, 146 were employed; 69 were going to a university or a community college; and 68 would be in these other categories of humanitarian reasons, medical reasons, a crisis in the family, and so forth. That is just by way of bringing these global figures down to a sort of daily situation.

Senator Goldenberg: The larger number were employed?

Mr. Braithwaite: Yes, 146 of 283.

Senator Buckwold: When you say "employed," does that mean that the man had a job, that this man might be out for six months or a year in that way, or longer?

Mr. Braithwaite: No, that does not follow. What we attempt to do, in co-operation with the Parole Service, is to use this temporary absence, perhaps, for short-term employment, for a situation where a job opportunity arises and we want to take advantage of it. Perhaps a young fellow has been taking motor mechanic's training and there is a job opportunity which comes up in relation to a garage in a nearby community and the employer is willing to take this man on. In that case, we will put the man on temporary absence, consult with the Parole Service, and attempt to build on to the temporary absence, then, a day parole situation and hopefully, eventually, full parole. In other words, this is an example of the sort of continual operation of the correctional process. We are able to use the temporary absence to take immediate advantage of an opportunity, an opportunity that may not exist two weeks from now; and then, with our colleagues in parole, we attempt to convert that to a day parole situation and hopefully, eventually, full parole.

Senator Buckwold: How long would it last for that type of employment—a week, two weeks?

Mr. Braithwaite: It varies.

The Chairman: This type of situation would be conditional on the Parole Service, and then they take their action on it?

Mr. Braithwaite: In part, but not entirely, because there are other intervening circumstances too. For example, using this hypothetical situation, it could be that the employment was only of a short-term nature, maybe to provide summer relief for a full-time mechanic, or something of that nature.

The Chairman: I see.

Senator Hastings: You do not utilize it towards the final sentence? If a job opportunity shows up in his last month, you will get him out? He will not wait for the completion of the sentence?

Mr. Braithwaite: That is right.

Senator Fergusson: Mr. Chairman, I am sorry that when I started questioning I had not expected you to call on me. I want to go on record as saying that I am entirely in accord with the sentiments expressed by Senator Hastings and Senator Buckwold, in supporting the policy of granting the leave or temporary absence. I want to be on record that some of the committee—I do not know how many of the committee, but certainly I do—feel very strongly on this, and I support it.

There is one other thing I would like to ask. Mr. Faguy mentioned in his brief the P.S. Ross and Partners' Report of 1967. I remember very well in 1967 that I tried every way that I knew to get hold of that report, and was not able to get it. I would like to know if it is a public document.

Mr. Faguy: I really do not know. I do not think it is now a public document. I could check and see.

Senator Fergusson: Is it available to people? I do not mean that you publish it and send it around. I know I was refused it, and that is why I ask. You referred to it today, and I thought that perhaps when you were referring to it you thought that we had read it—which we had not done.

The Chairman: Is it possible to make a copy of that document available to the committee?

Mr. Faguy: Mr. Chairman, may I be allowed to check on this and see what we can do? I think it has been considered an internal document so far, but let me check and see.

Senator Fergusson: Very well. I know that I had really worked hard to get a copy of it at one time.

The Chairman: At this point, I wonder if I may put a few questions on the integration of the two services. I would like some points clarified. I understand that the majority of your staff in penitentiaries are concerned with custodial duties.

Mr. Faguy: Mr. Chairman, that is not so any longer. It is true that we are concerned with security, because by law this is one of our major responsibilities—to keep people within the institution. We do the best we can and I think we do pretty well, overall. Within the institution, we are definitely getting away from the strong security aspects and getting down to better programs, and to individual needs of the inmates. Also, we are getting to what we call dynamic security, as opposed to static security. In other words, it means alertness of the correctional staff—as you know, they do not carry guns any more; they talk with the inmates and relate with the inmates; they participate in some of their activities. We are definitely getting away from the strong static security type of environment that it used to be, with its clear demarcation between inmates and staff. Now we encourage just the opposite: we want the staff and the inmates to relate to one another, to talk to one another. The staff and the inmates participate together. We have, as you know, the inmate committees, making recommendations as to what changes should be made. We have accepted many recommendations which have been proposed since the creation of the inmate

committees. So we have gone away from the strict security aspect of the penitentiary.

The Chairman: In other words, you do not think of your prison staff as guards. That is an obsolete term?

Mr. Faguy: That is right. We do not call them guards, although let us admit that some of them are just that. Those people in the tower, for instance, are guards, to all intents and purposes; that is all they do. The majority are what we call correctional officers, and we want them to behave as such, as correctional officers and not as security guards. Over and above that, we have now created a new classification, called the living unit officers. These officers are responsible for a new concept which is being tested now in six institutions. People are being trained for it. They are going to be participating day in and day out in these activities, such as work activities, recreation activities, group discussions, group therapy and individual counselling. The correctional officers themselves, known as living unit officers, will be directly and personally involved in what I would call the "treatment" of the inmates, by participating in the counselling, and in the program, under the supervision of a professional person, the classification officer.

The Chairman: Something in the same way as a nurse's aid operates in a hospital?

Mr. Faguy: Yes, in a sense. It is someone who is not a professional, but who has been given some basic training, who has some basic knowledge and because of his experience, attitude and aptitude is able to deal with that situation. I think the majority of our staff can get involved and do this very well.

Senator Fergusson: Well, Mr. Faguy, I think that this is an excellent idea. Is that policy in effect in the Prison for Women?

Mr. Faguy: Yes. We have recognized the Prison for Women as a living unit institution. Only three or four weeks ago we recognized it. We are now authorizing them to obtain more staff in order to implement this program in the Prison for Women.

Let me say, however, in so far as the Prison for Women is concerned, that we have now just over 100 inmates. I am hoping to reduce that population by releasing inmates on parole and by granting temporary absences, but, more to the point, we are now making arrangements—in fact, we have already done so in Kingston—for the Elizabeth Fry Society to take some of the female inmates into a house in town, in the community, where they will be allowed to go to work or go out for educational purposes and so on. But they will be under the supervision of the Elizabeth Fry Society outside the walls of the prison. We hope to do the same in Toronto, Vancouver and all across Canada. Therefore, hopefully, our population within the Prison for Women will be reduced quite drastically.

Senator Hastings: With respect to staff, how many employees of native or Métis ancestry do you have employed in the Prairies?

Mr. Faguy: In the Prairies I think we have now some 13 correctional officers or guidance officers in our employ. There was a

special program to recruit staff of the Indian community, and out of 33 trainees 13 were assigned to the National Parole Service as assistant parole officers. Twenty were assigned in the Penitentiary Service, either as custodial officers or as guidance officers. Of these 20 we still have 11 who are employed, who have passed through all the courses and training and are now employed by the penitentiary services.

Senator Hastings: There are no classification officers?

Mr. Faguy: Not yet.

Senator Hastings: Are there any former inmates?

Mr. Braithwaite: There are some who are former inmates, but not former inmates of a federal penitentiary. Let us say that some of these are ex-offenders.

The Chairman: You mean that they have been in provincial institutions but not in federal institutions.

Mr. Braithwaite: Yes.

Senator Hastings: Do you have any special program at the moment for the increased recruitment of these people?

Mr. Faguy: Yes. In fact, the problem of the natives in our institution is one we are concerned with, and over the past few months we have been taking some specific steps in order to improve the relationship with the Indian population, and also to improve the knowledge that is needed to deal with these people. We have, for instance, at Drumheller what we would call a liaison officer. We have Mr. Chester Cunningham, who is a member of the native counselling service of Alberta, established in Drumheller to serve the Indian and Métis inmates and to counsel and help them, and also to help us and advise us as to what we should do with these people.

We have just signed a contract with Mr. Earl Allard, an Indian ex-inmate who used to be with the X-Kalay Foundation. He is well known to us and well known to institutional people. He will serve also as a consultant on institutional programs. We also have made contact with the B.C. Council of Indian Chiefs and the legal programs officer, and we have arranged a meeting for the end of this month so as to identify the needs of these people and what types of programs we should have for them.

So we have taken very specific steps in order to know the problems we have and how we should tackle them.

Senator Hastings: One specific step I might suggest is for you to utilize more effectively your Native Brotherhood which you have within the institutions. They are quite capable individuals and have ideas with respect to their own difficulties. I think if we communicated a little more and listened to them, they would probably have a great deal to contribute to their own success.

Mr. Faguy: As you know, we do use the Native Brotherhood within the penitentiaries. They exist within the penitentiaries and we have made use of them. But we feel also that we must get advice

from the other councils of Indians and Métis outside the walls of the penitentiaries so that altogether we hope we will have the best possible programs to meet the needs of these people in particular.

Senator Buckwold: You have commented on the importance of a predisposition report and a judge's report. I gather from what you say that this is not compulsory at the present time. In other words, there may be some judges who do this, but I gather most do not. In your opinion, how could that be corrected? Simply by a directive which would say that it must be done?

Mr. Faguy: First of all, let me say that I could not possibly give a directive to judges. I would not dare.

Senator Buckwold: I did not mean that you would.

Mr. Faguy: Certainly, I would hope there would be an effort on the part of all government agencies and people concerned to reach this point where right from the very beginning there would be a pre-sentence study and report. Naturally, the judge would use that. He does now in many cases. Hopefully, also, there would be a report from the judge indicating the sentence and the reasons for it and what the judge expects. We do get this sort of thing from time to time. I have correspondence from judges who write to me on individual cases saying, "Mr. Faguy, I have condemned this man to such-and-such a sentence. Here are the facts of the case. These are the reasons for my judgment. Please take this into consideration in your treatment of the offender." Such correspondence is extremely useful.

Senator Buckwold: What percentage do this?

Mr. Faguy: No more than 1 per cent.

Senator Buckwold: It seems so fundamental to a layman that this would be a very important part of the whole judicial or penal process.

Mr. Faguy: The total correctional program and service has to get together and get integrated. We have to start even before that. Perhaps we should do more prevention work than we do now. But once an offence is committed there should be, hopefully, more probation. I am not a judge and I would not venture to say that this would be done, but hopefully there would be more probation. Then, once we have them into the service, again there should be a united, unified system that identifies and analyzes the problems of the offender and determines what his needs are. This would be a joint plan and a joint decision all the way through, so that when the offender goes on parole everybody is in agreement as to what his needs are.

I am hopeful that one day even more than that will be done and that after the inmate has left the penitentiary, after his sentence is over and after his parole is over, there will be someone who will continue to help him. This is where it could count so very much.

I feel my responsibility is relatively small or short in duration in the total process, because it occurs only when the inmates are inside. In my opinion, much more should happen before they get to

us and a great deal more should happen after they leave us. On a long-term basis I think this is extremely important in order to reduce recidivism and to help these people.

The Chairman: With respect to pre-sentence reports, at present they are prepared by provincial probation officers, are they not? Is there any federal provision for pre-sentence reports?

Mr. Braithwaite: To the best of my knowledge, Mr. Chairman, there is no federal provision for pre-sentence reports. The majority of them are prepared by probation services or by private agencies that may be called upon by the court.

There is one program which I think warrants mention, and that is the co-operation between the Parole Service and the Penitentiary Service which is mentioned in the brief, which we started in Alberta, where men who are sentenced are seen by parole officer while being held in the local detention centre. A report is prepared by the parole officer and the initial placement of the man in an institution is acted upon as a result of the parole officer's report. Here the Parole Service is immediately involved with the offender, and the Parole Service is working with us in placing that man in the most appropriate institution. So when the man arrives at the institution we have some immediate information available about him, his family circumstances, his offences and his reaction to his sentence. This is a tremendous help. As a result of this successful experience we are now expanding that experiment right across the prairie provinces and into the maritime provinces.

Senator Hastings: We have had the evidence of the Parole Service that they request a judge's report and a presentence report, and we have heard about these in many cases. But where do they go? Do they go to the Parole Board file or do they go to the Penitentiary Service?

Mr. Braithwaite: That report comes to us. But it is not uniform and, if I recall correctly, the Canadian Committee on Corrections, when they made their report, otherwise known as the Ouimet Report, had the concept of a judge's report as to the reasons for sentencing a man to a penitentiary. I think we are talking basically about two kinds of report, one being the report prepared, say, by a probation officer which supplies to the judge all the circumstances of a man's background, and of his offence. Then we are talking about another report prepared by the judge which says, in effect, "I sentenced this man to two years in penitentiary for the following reasons, and I am hoping that this is the kind of program he will receive while he is within the penitentiary." So these are two separate reports we are talking about. We get many presentence reports where there is a good probation service and where we have this experimental service which I referred to, the Parole Service; but we do not get very many judges' reports, as the commissioner has already indicated.

The Chairman: This would call for a written decision on every penitentiary sentence from the courts and also an extension of the investigative services to provide presentence reports in all cases. This would enable you, in your opinion, to do a much more effective job than you could do otherwise.

Mr. Faguy: Yes, we would be more knowledgeable of the case.

Senator Buckwold: In listening to the Parole Board representatives speaking, they indicated that there was a shortage of staff in the penitentiaries. They have their shortages too, and I do not want to be critical, but they felt that in the classification service, which does the assessment of all prisoners, the staff personnel available was very inadequate to numbers. I am not speaking of the quality of the work but of the numbers available, and in their opinion this fact affected the efficiency and effectiveness of the parole system itself. Can you comment on that?

Mr. Faguy: I would certainly agree that for a period of time, until recently, in fact, we were short of qualified classification officers. We are not being critical of those who are in the service because they do a good job. However, we have taken some action. We have just completed an extensive recruiting program of classification officers, and in the last two months we have added some 30 classification officers, for a total of 130. I hope to recruit yet another 13 to add to the staff establishment, and I have had to take positions from other sources in order to fill that need which is a very basic, essential need. But at this point in time we are meeting a new ratio which we announced last year—a few months ago—whereby in a reception centre we would have one classification officer for every 40 inmates; in a living unit institution for young adults and young offenders such as Drumheller, Cowansville, Matsqui, Warkworth and Springhill and the Prison for Women, one for every 50; and in the maximum security institutions, one for every 75. We have met this quota with our recent recruiting program which has just been completed two weeks ago.

As I said, I have now authorized 13 additional positions because we have an increase in population right now. This has been an unexpected increase, so I have authorized the further positions. The result is that, taken all across the service, we will have a ratio of one classification officer for every 57 inmates. That, of course, is an average because you have 40 in some places and I think we need a very reasonable ratio, so we will be able to give individual attention to the inmates.

The Chairman: What was the ratio?

Mr. Faguy: It was as high as one-to-150, and one-to-200 in some institutions. It was unbelievable.

Senator Buckwold: What qualifications do you look for in a classification officer?

Mr. Faguy: A professional social worker, a criminologist—that type of person.

Senator Buckwold: When you look for him, does he have to have some other experience? Do you take them out of universities?

Mr. Faguy: Well, some of them come straight from university, and they get training on the job with our people; but many of them have experience in other places.

Senator Fergusson: Will there be enough people interested to keep this going?

Mr. Faguy: We find that to be the case, yes. We were concerned about that for a while, but I would like to think that because of the reforms we have made and because of the favourable publicity among that type of person, the correctional people, they will realize what we are trying to do; and they are willing to come in and help.

Mr. Braithwaite: I think the other advantages we have, having brought our ratios up to one-to-57 and having made the presence of trained classification officers apparent and real, make it possible for us to attract other professional people because the presence of professionals tends to attract professionals.

Senator Hastings: But out of this 130 you immediately have to deduct 35 for the senior classification officers.

Mr. Faguy: In each institution we have allowed only half a position for the supervisor to deal with inmates because the rest of the time he is supervising, co-ordinating and talking to the staff. So the supervisor's job is not full-time with inmates but only half-time.

Senator Hastings: So that your ratio of one-to-57 immediately goes out.

Mr. Faguy: Yes, but, as I said, we are adding 13 positions, so we will meet that ratio.

Senator Hastings: Dealing with classification, I have always thought we classified institutions and not inmates. But on December 7 you declared the Manitoba Penitentiary, Stony Mountain, a medium-security institution. What happened on the night of December 7 to the inmates?

Mr. Faguy: Stony Mountain, Manitoba, had been used for medium-security type of inmate for some time, and then there came the point in time when I had to announce it officially for everybody so that they would know the type of inmates we had in there. It affected the question of staff classification, staff grading, et cetera. So, we had to make an official announcement, but to all intents and purposes it had been a medium-security institution for some time.

Senator Hastings: With reference to medium and maximum, we have been told that there are 2,400 men under maximum security when only 700 are actually in need of maximum security, so that we have 1,700 in maximum security who are being denied the benefits of the programs and of working towards a parole, by virtue of their being penalized by our keeping them under the restriction of a maximum-security institution.

I am quoting from Special Report 1, entitled "*Design of Federal Maximum Security Institutions*," at page 10:

We feel that in principle this is a misuse of the medium security inmates who should be experiencing the correctional program best designed to aid their own growth and development. It seems also to be ineffective as the aggressive inmates will usually

dominate these other inmates through the process of the prison sub-culture.

There are 1,700 medium security and minimum security inmates who are being detained in maximum security institutions, and they are being denied the benefits which are available to them.

Mr. Chairman, I move that the statistics supplied by Mr. Faguy appear as an appendix to the record of today's meeting.

The Chairman: Yes, they will be very useful.

Hon. Senators: Agreed.

(For text of statistics, see Appendices "B" to "G").

Mr. Faguy: Mr. Chairman, apart from identifying the reasons for the visits, these statistics provide numbers by regions and the reasons for failure to return. Also included are the number of known crimes committed while on temporary absence, and the percentage of offenders who are on temporary absence. The number of temporary absences granted from maximum, medium and minimum security institutions is indicated. These statistics should prove extremely useful in analysing and understanding the temporary absence program.

If you wish, we can also provide information with respect to those serving life sentences and the categories of cases for which we insist on a three-year minimum stay before they are allowed out. Information can also be provided with respect to incidents in relation to the numbers allowed out. The incident rate is much lower, even among those serving life sentences and that type of inmate, than any others.

Senator Hastings: Which means that we should not be keeping them 10 years?

Mr. Faguy: I would not wish to comment on that, as it does not fall within my responsibilities.

The Chairman: It is a good answer to a good question.

Senator Thompson: In addition to the statistics, could you provide the directives issued with respect to temporary absences?

Mr. Faguy: Yes, we will. In addition to directives, instructions are issued, which are detailed and I do not think you should have them. However, we will certainly supply the directives related to general policy.

In reply to the previous question, we are pleased with the Mohr report, as indicated in the press release. The minister has accepted the principles and the concepts announced in it, and I might say that I personally certainly have accepted them. 37 per cent of our inmates are now in maximum security. The remainder is comprised of 50 per cent in medium and 13 per cent in minimum security. The Mohr report indicates that 20 per cent of our total inmate population are in maximum security, leaving 80 per cent of the inmates in non-maximum security. This means that there is a surplus of 17 per cent inside maximum security institutions. It must be borne in

mind, however, that at the present time the maximum security institutions contain reception centres. Among these are the B.C. Penitentiary, St. Vincent de Paul and Kingston Penitentiary.

We also have psychiatric cases inside those walls. Therefore they are counted in that population. We also have inside those walls those who are there for maintenance purposes for the institution. In effect, we are not that far away from that 20 per cent, although we still have a lot of cleaning up to do.

There are the real hard-core maximum security cases, and also other cases. Were it not for the fact that they are psychiatric cases, they might not be in a maximum security institution. Were it not for the reception process, they would not be inside those walls. With respect to St. Vincent de Paul, in Laval, we hope to open in May a new reception centre. That group of inmates will move from St. Vincent de Paul into the new reception centre. To all intents and purposes, the reception centre is still a maximum security institution, because we do not know what the inmates or offenders are like. They come in, and we have to classify them.

Senator Hastings: I am not talking about the hardened criminal. I am talking about the one who should not be in there. There are 185 inmates of the British Columbia Penitentiary who should not be there. They should be in a medium or minimum security institution.

Mr. Faguy: In British Columbia we hope soon to have an additional 50-man unit, when we shall be able to transfer some of those inmates from maximum to medium security and from medium to minimum security. We hope to move more and more people from maximum to medium security, and from medium to minimum security.

We are also studying the possibility of enlarging the capacity of our minimum correctional camps in British Columbia. That again will allow for some people to be moved out.

The minister last night announced approval of a new psychiatric centre at Matsqui, which will enable inmates to be moved from the British Columbia Penitentiary to a psychiatric centre. We hope to reduce the number to approaching a reasonable figure.

We agree with the principles and concepts which have been expressed. As space becomes available, inmates will be moved to the right security classification.

Senator Hastings: With respect to the minister's announcement, he also said that 12 of the recommendations had been considered. How much consideration have you given them?

Mr. Faguy: Well, I could take you through all of the 22 recommendations.

Senator Thompson: How many psychiatrists do you have to meet the needs of those who need psychiatric treatment? Do you have psychiatric services for them?

Mr. Faguy: Yes, we do. We have now identified the needs of the psychiatric centre following discussion and consultation with universities and with other psychiatric centres. The standard has been accepted by the Association of Psychiatrists.

There has been close consultation with psychiatrists. We have an advisory board of psychiatrists, appointed on a permanent basis, which sits regularly in order to look into this problem. The board recommended that we establish the Matsqui centre in British Columbia. It also advised on the staffing of the institution. We hope to recruit a director for the new centre, and we have some good candidates in mind. There are also psychiatric nurses available, and we hope to recruit more.

Senator Thompson: The situation is that anyone with a psychiatric disorder will not be sent to a maximum security penitentiary, but will now go to a treatment centre?

Mr. Faguy: That is right—hopefully, at least. The consensus is that from 10 to 12 per cent of the population requires psychiatric treatment of one kind or another. Some cases are acute and others are semi-acute. In Quebec and Ontario we now have some kind of psychiatric centre in the old institutions. We are not satisfied with the services or the amount of treatment provided. However, it is available, and the worst cases are now separated and treated. We hope eventually to be able to provide adequate and the right sort of treatment. However, it will take time before we can obtain the accommodation, facilities and staff to provide everyone with the treatment he requires.

Senator Thompson: Are the centres near universities and hospitals, or are they located in remote areas?

Mr. Faguy: The psychiatric centre at Matsqui is further out than we would have liked. It is in the Fraser Valley, about 40 or 50 miles from Vancouver. There is a good highway, but nevertheless we feel that it is too far out. We went there because the building was available; otherwise we would have had to find a location and erect a building, which might have taken two or three years. However, as a matter of principle, we feel that a psychiatric centre should be located near communities and universities, in order to obtain good staffing, have a good relationship with the community, and receive the assistance of those undertaking research at universities.

Senator Thompson: Will that principle be followed?

Mr. Faguy: Yes. The building at Matsqui is on a temporary basis. We are studying possible sites for its permanent location. We have accepted the principles so far recommended by our psychiatric advisers. Their final report is not yet available, but they have already recommended that such centres be close to universities and communities.

Senator Thompson: Are there instances where it is clear that some inmates require the services of a mental hospital, for electric shock or other treatment? Can he be treated in a hospital, or are those facilities maintained in the institution?

Mr. Faguy: Hospital treatment is provided for some acute cases. Arrangements have been made with psychiatric hospitals to take these people, such as that at Penetanguishene, and Pinel Institute in Montreal. However, there is a limit to their capability for doing this.

Some mental institutions or psychiatric centres do not like to accept inmates because of the security problems involved.

Senator Thompson: I am not clear about that. You say that some do not like to do this. Can you give me the number of people with psychiatric disorders who, because of the lack of community resources, are in penitentiaries? How many psychiatric cases are in the penitentiaries?

Mr. Faguy: We say that 10 to 12 per cent of the population require treatment.

The Chairman: That is, the penitentiary population?

Mr. Faguy: The penitentiary population numbers about 7,600. Let us take 10 per cent of that. We have some who are receiving treatment now. We may be left with 180. I would say that there are perhaps 600 who are not receiving what I would call adequate treatment. If you wish I could check this and give you an accurate figure. At the moment I am just guessing.

Senator Hastings: It is about 400.

Senator Thompson: How many psychiatrists do you employ?

Mr. Faguy: I believe it is 17, but I am not sure. Again, I can get this information for you.

Senator Thompson: Would you say that is enough?

Mr. Faguy: No it is definitely not enough, senator. We have only to look at the needs of a new psychiatric centre to realize that the number of psychiatrists employed is not sufficient. We are now finding that psychiatrists are becoming more interested in the Penitentiary Service; they realize we mean business and that we are going to provide the service. We have been fortunate in being able to recruit a good regional psychiatrist for the Montreal area, we are in the process now of recruiting one for the Ontario region, and we have some excellent candidates for positions in British Columbia.

Senator Thompson: You are paying a salary that is attractive, are you?

Mr. Faguy: Yes, we are. In fact, the other day while looking at the salary of a senior psychiatrist I thought that perhaps I should become a psychiatrist.

Senator Fergusson: Mr. Faguy, you mentioned earlier the Matsqui institution, and I was interested in your statement that there is a building available there. My knowledge of this might be rather vague, but I visited Matsqui a few years ago and at that time I understood there was a program for drug addicts. You were not the commissioner at that time, I know, but ten women had been transferred from the Women's prison in Kingston in order to undergo drug addiction treatment at Matsqui. I understand that there are now no women at that institution, and yet there is a building available.

Mr. Faguy: It is exactly because there are no women there that there is an available building. We closed the female unit at Matsqui, and this is the building now available for a psychiatric centre. The female unit was closed because there were not enough females in that region to warrant the operation of a prison for women, so they were transferred to Kingston. I believe there were 13 of them transferred.

Senator Fergusson: There were ten inmates when I visited the institution. Are those inmates now receiving treatment for drug addiction at Kingston?

Mr. Faguy: Not the specialized treatment that they were receiving in the Matsqui institution, but studies are beginning to indicate—and this has to be researched further—that the best way to treat drug addicts is to keep them functioning in the normal environment and not to segregate them.

Senator Buckwold: In Saskatoon I was very much involved in the sale of some land by the city to the Penitentiary Service, a lovely site close to the university hospital. This land was purchased some four or five years ago as the site of a psychiatric treatment centre, but since its purchase nothing has happened. Do you have any comment on how that project is coming along?

Mr. Faguy: As I stated earlier, senator, we are trying to make these things happen. We hope this centre will be built. This particular project is part of a total study being carried on by the advisory council on psychiatry. They are aware that we have the site and it is ideally located, and we are now awaiting the report of that advisory council.

Senator Buckwold: It has been four or five years since that site was purchased, and you are now awaiting a report as to whether you should go ahead with it?

Mr. Faguy: Well, senator, I became commissioner just over a year ago, and six months ago I became aware of the need for more psychiatric service, and we have taken action in that regard.

Senator Buckwold: I am only suggesting that you have an ideally located site for such a centre.

Mr. Faguy: Yes, that is right.

Senator Buckwold: Perhaps you might get the advisory council moving in that regard.

Mr. Faguy: They are well aware of this, senator, and I know they have already considered it. I am quite sure it will be part of their final report to be submitted in April.

Senator Buckwold: I see. Now, another question is with respect to the division of the appeal institutions as between the federal and the provincial governments. As I understand it, if an individual is sentenced to more than two years he goes to a federal institution, and if it is less than two years he goes to a provincial institution.

Could I have your assessment of that? Do you feel we should have one prison system as opposed to federal and provincial systems?

Mr. Faguy: Mr. Chairman, may I invoke the Fifth Amendment? !

I might say, senator, this is a matter of policy which I think would have to be reviewed by the Solicitor General, in consultation with the provinces.

Senator Buckwold: You are not prepared to comment as to whether we should have one integrated prison system, or . . .

The Chairman: May I just intervene at this point, senator, and perhaps protect Mr. Faguy. You are asking a federal public servant to make a statement concerning an opinion as to how the provinces discharge their responsibilities. I doubt if even the minister would want to make a public statement in that respect. This committee might draw conclusions at a later date and possibly carry out some investigation in a quiet way, but I think it would be embarrassing for Mr. Faguy to be asked that question and to be allowed to answer it. The question will be ruled out of order.

Mr. Faguy: May I just state that in the Province of New Brunswick there is a contractual arrangement with the province whereby some of the provincial inmates are in our institution.

Senator Buckwold: My personal opinion in that respect is that it is rather stupid to have this arbitrary cutoff point of two years as a result of which a man goes to penitentiary.

Mr. Faguy: All I could venture to say is that it needs to be reviewed.

Senator Buckwold: My other question is with respect to the parole system and our whole attitude to crime. I do not think there is any doubt that there is a backlash against what we call the enlightened treatment of criminals. In that regard, there was an article in the *Winnipeg Tribune* yesterday by Mr. Kennedy, a columnist with that paper, and apparently a supporter of law and order, in which he outlined the statistics. I meant to bring that article with me, but, unfortunately, I left it in my hotel room. Those statistics indicate that over the last five or six years, I forget just which, there has been a tremendous increase in crime and when I say "tremendous" that is an understatement. I do not want to quote the figures from memory, but those figures indicated murder had gone up 50 per cent, and something else had gone up 80 per cent, and so forth; and, of course, those figures were related to the manner in which we are now dealing with criminals.

My question, Mr. Faguy, is: How do we answer these things? We are now moving along the line that most of us wish to see; we want to rehabilitate criminals. I suppose the courts in many cases are more lenient, and this is the type of thing that many of us support. However, on the other hand, there is this tremendous increase in crime, especially violent crime. Is this increase as a result of what we are doing, or is it just the system, or a combination of both? Do you have any comment on that?

Mr. Faguy: I would have to be careful not to venture into a domain that is not mine. I have not personally researched this area, although I know other people have looked into it. Many people evidently feel that there are many, many reasons for the increase in crime, and it is not simply because of the correctional service system. There are many, many other aspects.

I would suggest, Mr. Chairman, if I may, that perhaps some adequate answer on this—

Senator Buckwold: I will file the statistics, if you wish.

The Chairman: I think the question of the increase in crime could properly be directed to Commissioner Higgitt of the RCMP, who will be with us tomorrow.

I might also say at this time that there is another school of thought which says that the deterrence to crime is not the punishment but the possibility of being caught and convicted. This gets into police areas, however. In so far as those figures might show that there has been an increase in crime, this would properly be something for us to look into, and I suggest we can go into it with Mr. Higgitt.

Senator Buckwold: This is in fact related.

The Chairman: Would you have your article and be ready for Mr. Higgitt when he arrives?

Senator Buckwold: Yes.

Senator Thompson: You mentioned psychiatric treatment and a psychiatric hospital to be located near the community. Are you satisfied with the location of the penitentiary?

Mr. Faguy: No, I am not, sir. Again, I can refer to the Mohr Report. One of the basic concepts and principles expressed there, and also in the correctional and criminology associations—every one of them recommends that we be located in or near the community. The minister has stated publicly that we accept these principles, and therefore we hope to build in or near the community. The problems created by having this institution located 50 or 60 miles away from the nearest town are unbelievable. It prevents us from carrying out the full program we would like to. Especially with the new emphasis on community oriented programs, if you have to travel 60 miles a day, or you have people come in and they have to travel 60 miles, winter and summer, to participate in the program, it is very difficult. What we have done in the program is this. First, we accept this principle that they should be in or near the community, but in order not to have to wait for years to build an institution we have moved ahead and provided for an increase in correctional release centres or community correctional centres, we call them now. Two weeks ago we added one in Calgary. We are going to have one in Regina, one in Hamilton, one in Halifax, and one in Edmonton.

So we have added five other correctional centres. I have mentioned briefly that we are looking at another unit somewhere in Vancouver. So we are more and more trying to bring the inmates out into the community, through small centres, release centres,

where they can go and work on assignments in the daytime and come back at night and are under our supervision. They are, in fact, institutions.

Senator Thompson: I was interested in connection with Drumheller. Over the weekend, I was reading an article about this small community. It seems to me that the person in charge of Drumheller rather liked the idea of a small community, where the people had become accustomed to inmates; whereas in the larger community they had difficulty about that. I wondered if you had followed his thinking yourself, or if you preferred to be in a larger centre.

Mr. Faguy: Everything considered, I would still prefer to be near a large centre, for employment opportunities, educational facilities, availability of community workers, volunteers, et cetera. There are many reasons in favour of being in or near the community.

I might say, however, in passing, that we are very pleased with the community in Drumheller. They have done extremely well for us. The mayor and his wife, the senior citizens, indeed, all the citizens have participated and have co-operated; they have provided employment for the inmates. Even though sometimes the unemployment rate was high in Drumheller, they kept some of the inmates on the job. I must say that we were very pleased—but it is an exception.

Senator Thompson: They are good people there.

Mr. Faguy: Yes. Do you come from near that area?

Senator Thompson: No, but I have been there.

Senator Hastings: It is just that he is an excellent senator.

The Chairman: This self-serving heresy will stop, please.

Senator Fergusson: Do we not sometimes find a different attitude in the community? I can remember down in New Brunswick, when the provincial reformatory was going to be built, the community resented it very much. They thought that they should be able to sell their houses to the government, because they felt that the value of their houses was being diminished. Do you find this in other communities?

Mr. Faguy: The community will naturally tend to react against locating a penal institution in their midst. I think this is a general reaction. We have a responsibility there to inform the public, to inform the people as to what it is we are going to do, ahead of time, as to what the programs will be. We are able to cite examples of the success of other institutions we have had in our communities. I think it is a matter of public relations, or public information. As we get, hopefully, more and more successful with our programs, I think the public will come to accept this location of institutions near or in communities.

Might I also say that we had a public attitude survey carried out some time ago. I must admit that, to my surprise, I found the survey indicated that the majority of the population was rather favourable

to reforms in correctional institutions and this sort of thing. I was surprised, but it was favourable rather than negative. I think that with good public relations and good public information, we can make it.

Senator Hastings: I wonder if you could find a better name than "community correctional centres"? It has a kind of connotation of another "joint" that is going to be established within the community, in a residential area.

Mr. Faguy: In official language, in bureaucrat's language, I call them community correctional centres, but I would like, for instance in Calgary, to call it the Scarboro Centre.

Senator Hastings: Or call it the Faguy Manor?

Mr. Faguy: I remember that a suggestion was made not long ago by a senator, and I was flattered.

The Chairman: It may be we could call them all Shangri-la.

Senator Hastings: They are part of the correctional process.

Mr. Faguy: We use these centres not only for release or pre-release now, but, I would hope, by agreement with the parole people, that some of the parolees in need of recycling or re-counselling would come in and stay there for a while. So they are, to all intents and purposes, correctional in a broad and good sense of the word.

Senator Thompson: I wonder if I could come back to your point of unification of parole and custodial officers? Could I put it to you, first, in this way? You are a distinguished public servant in other areas as well as commissioner. Would there be a time when a man could come in as a custodial officer and feel he could arrive at your position?

Mr. Faguy: Oh, yes. The position of commissioner is open to anyone who wants to participate in the program, is willing to take it on and is also qualified to do it. I would maintain, however, that what you need basically, first of all, is an administrator, a correctional administrator and, hopefully, a professional correctional administrator. At this point in time, you have a correctional administrator, myself. I would hope that there would be a professional person who has been through the ranks, who is qualified professionally and who also at the same time has the ability and capability to be an efficient administrator.

Senator Thompson: What I was getting at is that in the navy or in the services, which perhaps yourself and some of us have been through, there was a period when it was suggested we start as an ordinary seaman and then get this training and move up to become an officer, and so on. Does this apply to your service?

Mr. Faguy: Yes, sir. We have the regional directors now, which is one level below the associate deputy commissioner and deputy commissioner. Some of these people have been through the ranks. They came in as correctional officers or guards, even in those days.

They have gone through the service and have become regional directors. Most of our directors or wardens, as we used to call them, have been through the ranks. Others have come in at the middle management level or as classification officers and have become directors. It is possible, certainly.

Senator Thompson: If I were, the parole officer type, who had taken a master's degree in social work, I wonder how I would feel about moving into the custodial care service where perhaps a fellow has got qualifications like Grade 7 or Grade 10.

Mr. Faguy: This is one of the advantages of having the unified service, because a parole officer could become director of an institution. He could come through the ranks and the service to be possibly the commissioner, or whatever the title would be, of the unified service or the correctional services. We have now an ex-district representative of parole services as a director. We have qualified recently another assistant director of parole to become a director of an institution. If there were a unified service, I would make it a point, or it should be made a point, to have career planning for all these people to match together, and to go to exchange and interchange between the two services. In this way you would have a man who knows both sides.

Senator Thompson: In the case of the parole officer, when he exchanges, what position in the penitentiary would he have?

Mr. Faguy: He could be a classification officer, or a chief classification officer, or in charge of programs; or he could become co-ordinator of programs at the regional level, a position which has just been created and which has been announced recently in Ontario and Quebec, and which is soon to be announced in British Columbia. All these positions are available to these people, but they would have to prove themselves to be not only professional counsellors but also able to manage people, to co-ordinate the work of people, to plan ahead and to push the program.

Senator Thompson: With my own very meager knowledge, it appears to me that in the penitentiary field, it is dissimilar from, say, the RCMP, where they all start at the same point. In the RCMP you all start as constables and go to Regina and get training right at the start. The fellow who comes in often can move to the middle echelon or to the top echelon whereas the fellow who starts at the bottom finds that it is a hard climb for him to get up. Are you changing that?

Mr. Faguy: We have. I would not want to say that you have to start as a guard in order to become a director, a regional director or even commissioner. We have taken people in at all levels. The majority of them have grown through the ranks, however. The majority of our directors have. Some of them, during their career in the Penitentiary Service, have taken courses at university and have qualified themselves and have become professionals. They did this while they were in the service. We have now authorized, on a regular basis, every year, ten positions where we send ten of our officers to university to qualify themselves. I hope to increase this number of positions, by the way. We also take people from outside, from other services, provincial services, for instance, people who have proved

themselves there and are willing to come and want to come to work for the federal service. Some of these have been taken on. For instance, my associate deputy commissioner used to be in a provincial system in British Columbia and moved over to the departmental side on research planning. He is now in the Penitentiary Service. So he has experience as a classification officer, an assistant warden, deputy warden, warden; and now he has this total experience that I hope to get. So it is a mixture of both.

The Chairman: In the past there has been criticism by parolees of parole officers, on the basis that the parolee is afraid that the parole officer is just an extension of the guard system that used to exist. He equates him with another arm of the police, in other words. I think for them to function properly this image of the parole officer has to be effectively destroyed. It has to be destroyed so that those he deals with have confidence in him. Is there a danger in your system that this would be accentuated? Or do you think that by following this out that it will give you an opportunity, by their performance in the system, to sell the parole officer as a friend to this person before he has to meet him on the street?

Mr. Faguy: I would agree certainly with the last part of your statement. I might say that I am not in the Parole Service, but I think it applies to the parole officer just as it does to our own officer. If the officer knows how to handle the situation, how to handle the inmate, to counsel and advise, you will find, as we are finding more and more, that the inmate will accept him as a person who is there to help, advise and counsel the inmate. If the parole officer does his job as he is supposed to do—and I am sure this is the case for the majority, although I do not know it for a fact—the inmate will accept him as a person who is there to help, advise and counsel him, and to help him get back into society as a productive citizen. It is a question of aptitude and attitude. I am sure that they do not have 100 per cent success any more than we have.

Senator Hastings: Mr. Faguy, could you explain the living unit concept to us, slowly and carefully?

Mr. Faguy: With respect to the living unit, we hope to have living together a small number of staff and inmates. The Mohr Report suggests only 12 inmates in a group living together with staff. You would have the same staff working with the same inmates on a continuing basis, participating in all activities. They would be participating in group therapy and group discussion. We are even going to use videotape, audiovisual, so that people will see themselves in actual, critical situations. They will see themselves reacting to problem situations, and then the discussion is on why they reacted that way and what can be done to help them. This applies also to the staff who will also see themselves reacting in a situation. So it is helpful both to staff and to inmates. The important point is that they will be living together.

Senator Hastings: In a particular area?

Mr. Faguy: In a specific area in the building, yes. This is what the Mohr Report suggests. I am not saying the report will be accepted exactly as that, but the principle is a small living unit of 12 people in a small building. It could be a wing, a separate wing, if you

like; but they live together, the same staff and same inmates on a daily basis.

Senator Hastings: Will the parole officer be a part of this unit?

Mr. Faguy: We do not now have a parole officer in every institution. Certainly, you could not have a parole officer in every unit; this would not be possible. But, as we have said, we would like to have, if possible, a parole officer in every institution. As a starter, we should certainly have at least a parole officer in those far-out locations, such as Drumheller and Springhill, Nova Scotia. There should be a parole officer on the spot. He lives with them and he knows what is going on. They study the case together. Now it is a question of staffing and what-not. This has been discussed, by the way, with Mr. Street, the Chairman of the Parole Board. We are looking at ways and means of improving the liaison and co-operation between the two services.

Senator Thompson: You have been speaking about the parole officer, but would that not also be the classification officer's role?

Mr. Faguy: Our own classification officer within the penitentiary is, in fact, a counsellor for the inmate while in the institution. If there is going to be a proper study of what is going to happen after he leaves the institution, it would be desirable for that person to be close enough to the inmate to be able to know what is going on and to understand his problems, so that the decision at the end is a united or unified decision.

Senator Hastings: While the inmate is in the living unit, does he still participate in the school or the shop?

Mr. Faguy: Yes. He certainly could be going to school. It would all depend on what the program would be. There will be more time allocated for group discussions, and so on. The staff will also have meetings more often.

Senator Hastings: With the inmates?

Mr. Faguy: Yes, with the inmates, but also by themselves in order to say at one point, "What is happening? Are we doing it right or wrong?" Most of the meetings would involve inmates and staff together. That is happening now in Springhill, Nova Scotia, for instance, and I think that is going very well. I have sat in at one of these meetings myself in order to listen to the kind of discussions that go on. The staff had a post mortem afterwards with the professional classification officers, the padre, the chief classification officers and some of the correctional staff sitting together, saying, "How well did we make out?" This was very interesting. This is communication at its very best.

Senator Hastings: I agree with you that you cannot have a parole officer for every unit, but some sort of interplay should be had so that he goes in and out.

Mr. Faguy: I think so. I can tell you that the best thing would be to have one in each institution, but for the time being, at least, we will have one in the far-out locations.

Senator Hastings: They could take an hour a week with the unit.

Senator Thompson: May I try to pin down the classification officer? You say he is there for counselling. I understood you to make a statement to the effect that there are 57 cases, roughly, on an average.

Mr. Faguy: That is the objective. With the people we have recruited, we have this ratio now. Thirty have just come in who will need some training; but that is the ratio now.

Senator Thompson: A previous witness suggested that perhaps a classification officer may see a man three times prior to that man's parole. From what you have said about counselling, and a sort of intensive approach, three times during a term in the penitentiary seems a very remote kind of counselling. How much time does the classification officer actually spend counselling with each of those inmates?

Mr. Faguy: Well, sir, it varies. As we have said, we are short of classification officers. The ratio is too high. We had one classification officer with 150 inmates, for instance, in some of the institutions, and there was no way that the officer could get to see the inmates on a regular basis or as needed. Therefore, some of the inmates complained, and rightfully so, that they were seen once only every six months, or even once a year. Because of that we have gone to the intensive recruiting program to make this new ratio. So the ratio is very recent. We have just completed recruiting 30 new classification officers.

Senator Thompson: The classification officer will simply do classification work? He does nothing else?

Mr. Faguy: First of all he does a lot of paper work. Being in the government we have a lot. We are trying to minimize the amount of paper work that these people have to do. They have to approve, for instance, temporary absences. They must get involved in deciding whether or not that man should go on a temporary absence, and so they have to know the inmate, interview him, find out the reasons and see what would be the benefits. Afterwards they have to find out what happened, how successful it was and what purpose it served. That is one of the things they have to do. At the beginning, when he comes into the penitentiary, they have to sit with the inmate and review his background and recommend what the program should be. They decide what should happen to the inmate in the institution. Secondly, there is counselling, hopefully with the new ratio, as required, or as close as possible to that. We want to use these people to train the correctional officers in the living-unit concept, in counselling aspects and in communication with the inmates. So they also become staff trainers, which is a new and very important role. Their knowledge can hopefully be given to the correctional officers, who together with the classification officers will participate in this useful work.

Senator Thompson: With the classification officers working with the men, do you think it would be wise for them to get some form of computer training or some other type of training? I understand that the Evans Report has pointed out the necessity for bringing up

to date the training facilities so that they will compare with the outside world. How far has that advanced? The making of licence plates might be a useful trade but it is rather a unique one which I do not think could be used outside.

Mr. Faguy: The Evans Report has been studied and reviewed, and there was a committee in the department making recommendations on that report. I have myself gone over those reports, and we have decided that there are certain steps which we must take. First of all, as a basic principle, we have to try to have within the Penitentiary Service as close to a normal work situation as possible. That is easily said, but it is not easily done, I can assure you. Then we hope to improve the working of our industrial shops within the Penitentiary Service and to keep our people busy. One pilot plan we are now working on is at Joyceville, near Kingston, where we have started to study and have taken some steps, first of all, to attempt to describe the jobs of inmates within the penitentiary. That is done on a manual form that is available for all job descriptions. Secondly, we have had a study of the kind of products that should be manufactured within the penitentiary which could be sold within the government services on a regular basis so that we could have a regular production line going. We have had consultants in to look at Joyceville, to see what would be the needs in order to get what I call a factory or manufacturing plant going in the institution. This means two basic things. The first is construction—additions to the buildings which we have there now. The plans are ready and we hope to have this build by November. We are also hoping to obtain the authority to hire a consultant who will establish the manufacturing plant and work with us for six months to get it going. So when they come in these inmates will be hired and fired. They will be hired because they are qualified to do the work, and if not they can do some vocational training on the side, but the basic training will be done outside. They will come in and work like anybody else would work in a factory, eight hours a day, which they are not used to doing. They will be paid, I hope, a minimum wage, and being paid normally they will have to pay for room and board, income tax, unemployment insurance, workmen's compensation, to make the situation as normal as possible. If we can train an inmate to work in this way I think we will be getting somewhere because then, once he gets out, he will be able to do a day's work. Some of the complaints we have had, quite honestly, are that while they know their trades they cannot work eight hours a day. They get tired after three, four or five hours. So that gives them good working habits on the inside. As I think of our problems I sometimes think there are four basic elements that we should work at to be realistic. We should teach them social habits, because we know that many of them need to be taught social habits. They need to be taught real work habits, to work eight hours a day, 48 hours a week, like we do, or more. We also need to provide them, one way or the other, with meaningful companionship. You know about the Cursillo movement and what they call the M.2. This is where inmates are given a companion inside and outside the penitentiary. We are looking into that because I think meaningful companionship is desirable—a wife, girlfriend or another friend, somebody he can talk with and discuss his problems with, so that when he goes out he has somebody to go to to ask for advice and get help. Then having taught him work habits, social habits and given him meaningful companionship, we

must do something to provide him with suitable employment on the outside.

Senator Thompson: Is there any trade union in Canada which has given recognition to the training they get in penitentiary?

Mr. Faguy: Yes. First of all, the provinces recognize our training.

Senator Thompson: But I am talking about unions.

Mr. Faguy: Yes, the unions also. We have found, for example, that the Teamsters' Union was very co-operative. They have accepted our people in a plant where they do aviation work. They have been hired and accepted.

Senator Thompson: The period of training they have had in the institution has been recognized by the union as an apprenticeship training?

Mr. Faguy: Yes.

Senator Thompson: But there are a number of trades where they are not as yet recognized?

Mr. Faguy: Well, the bricklayers are recognized and the barber is recognized when he gets out.

Senator Thompson: He is recognized as a barber from the training he had in the institution?

Mr. Faguy: Yes.

Senator Thompson: And then he can go to, say, Toronto and get a job there?

Mr. Faguy: Yes, and many have done just that. It is a popular form of employment and is quite successful. Wherever we can do so we try to give training which is recognized by the provinces.

Senator Hastings: These 130 classification officers are supported by guidance officers. How many of those do you have?

Mr. Faguy: We have very few guidance officers left. I have decided that there should be living-unit officers, which in fact are guidance officers, or classification officers. The official classification of guidance officer is disappearing from the books. You will have either classification officers or living-unit officers.

Senator Hastings: Or correctional officers?

Mr. Faguy: No. Living-unit officer is a promotion from correctional officer and classification officer, so there are three steps. In other words, a correctional officer can become a living-unit officer (1) or (2) and then he can become a classification officer or a supervisor of a section. There is now a promotional ladder for these people if they want to participate and study and get involved.

Senator Hastings: Perhaps we could now turn to a new subject. I would like to discuss mandatory supervision, in view of the fact that

this has now been invoked. Do you not think that the terms "earned remission" and "statutory remission" are obsolete and should be removed?

Mr. Faguy: Well, here I must be careful and consider whether I am talking policy or not. I should not make policy statements. I will give you a personal opinion. There is a difference.

The Chairman: However, not for long.

Mr. Faguy: I feel that everything should be earned. We should not say that if you come in automatically you will receive so many days of remission. However, you will lose them if you do something wrong. I feel it should be the other way around, where you enter an institution and you earn what you get. There is a difference. I feel this is a positive application of the program.

Senator Hastings: We have both, do we not? We have the statutory remission which he receives automatically, and then he can earn extra days of remission.

Mr. Faguy: I feel that everything should be earned. You enter a penitentiary and you participate in their program. You are rewarded for your behaviour, for your work, and for your activities.

Senator Hastings: Then it is taken away from you by means of mandatory supervision.

Mr. Faguy: Mandatory supervision is law now. This affects the people who are probably in most need of it, the people who have been refusing to take parole or have been refused parole. These people, therefore, are in need of supervision and counsel. And with the additional correctional or rehabilitation centres which we have across Canada this will benefit these people. I feel they will receive more help than they have ever received in the past.

Senator Hastings: I agree they do need assistance, but it is difficult to assist those who reject such assistance.

Mr. Faguy: Yes, unless they are motivated and want to be helped, it is difficult. Nevertheless, we have seen time after time that at first they are very reluctant to receive help of any kind, but eventually they realize that there is something to be obtained from this service.

Senator Hastings: I was very interested in the increase in population. It is now up to 7,600, and this was reduced by 140, and of this number 15 have returned. It would appear we are not contributing very much to the statistics.

Mr. Faguy: Well, we are dealing with the difficult cases. We cannot expect the ratio to be low. It may very well be high. These are the people, as I have said, who have refused or have been refused parole, so the ratio may very well be high in problem cases.

Senator Buckwold: I feel that 10 per cent is very good.

Senator Hastings: However, that is only for one month.

Mr. Faguy: I would be very pleased if the figure was 10 per cent. I think the figure is around 35 or 40 per cent. I do not know; I am guessing.

Senator Buckwold: Mr. Chairman, I am wondering if we could be provided with information regarding the federal prison population for the last five years, the total expenditures of the Canadian Penitentiary Service for the last five years, and the per inmate cost annually for the last five years?

Mr. Faguy: Just to be sure, I have this, you are requesting information regarding the total per inmate cost over the last five years, the total prison population per year?

Senator Buckwold: Yes, I would imagine you would divide the number of prisoners into the total expenditure.

Mr. Faguy: We have those figures available and we will provide that information for maximum security, medium security and minimum security institutions.

The Chairman: This information should become an appendix to our record, so it will be available when needed.

Senator Andrew Thompson: I would like to speak further regarding the training provided in the penitentiaries, because I feel it relates to the opportunities which are available after a person has been paroled. I notice that the Guelph Reformatory recently sold their herd of cattle. This was, apparently, a tremendous herd which won several prizes. They did this because they felt this kind of training was no longer related to the agricultural activities in the community. You indicated that part of the training provided by the penitentiary was sewing mail bags. Are there other areas such as this which you feel are not really equipping a man to work after he has been released?

Mr. Faguy: It could very well be. I feel we are providing a useful service to the Post Office. I used to work for the Post Office Department, and I must admit that I appreciated the work which was being done. This year we were able to provide them with all their needs for Christmas, and we saved the department hundreds of thousands of dollars since they did not have to buy new bags. However, this does not provide training, except as it relates to their working habits, and it keeps them busy.

We have stated in the press release in connection with the Mohr Report that it is only a basis from which to start, and we will have to become more specific as to the total program in view of its recommendations with respect to the maximum security institution. We also stated that we would evaluate a total program throughout Canada as it relates to medium and minimum security institutions, including the farming and mail bag operations and so forth. We hope we will come to consultation, just as the Mohr Report did, and decide whether these operations should be discarded or continued. It may be decided that as long as these inmates are working on a bonus-incentive basis and being taught work habits of eight hours a day they should be continued. There would be a review of all these programs.

I do not wish to make a statement at the moment, but will wait for the completion of the evaluation.

Senator Hastings: What is the policy of the federal government regarding employment of former inmates in the Public Service of Canada?

Mr. Faguy: They are allowed to work in the Public Service of Canada. As you know, the mention of previous convictions was removed from the application form and such applicants are now accepted in the Public Service.

Senator Hastings: Are there any in your service?

Mr. Faguy: I believe we have one ex-federal inmate as a casual worker in a temporary type of position. He may have left now, as he was hoping for a better job.

The Chairman: Do any inmates express a desire to enter the Penitentiary Service?

Mr. Faguy: Yes, we are now receiving requests. I recall two recently from ex-inmates who said they were interested in returning to work as staff members. One of these two has good qualifications, and they were informed that a correctional officers' competition on a national basis will be announced and advertised, we hope, next week. They were advised to submit applications. If qualified, they could be accepted.

Senator Buckwold: Would this be a plus or minus aspect?

Mr. Faguy: We must be very careful that the applicant has the right attitude and aptitude to work in an institution with other inmates. Problems could arise on both sides, related to both inmates and the new staff member. Personally, I favour the hiring of ex-inmates in the Penitentiary Service provided they have the right qualifications and attitude.

The Chairman: This would hardly have been possible under the old custodial system, but might prove very important in encouraging acceptance of the new approach. Am I correct?

Mr. Faguy: Yes. We have done quite a bit of work in this regard throughout the country in an endeavour to identify a number of ex-inmates who we think could serve as consultative bodies to us in order to improve the programs. We now have 115 names, some of them of well-known personalities, who certainly could be helpful if they wish to be identified with this program. One way or the other, we will consult with groups of ex-inmates in order to find out how the programs can be improved and the problems resolved. Groups of ex-inmates were, in fact, consulted with respect to the Mohr Report. They were asked for recommendations to improve the Penitentiary Service. If anyone should know, it is the ex-inmate. We are all in favour of using their knowledge, of using them as consultant, and we hope that eventually some of them will serve as members of the staff.

Senator Thompson: Custodial staff probably spend more time with inmates than do parole officers. What part do they play with respect to decisions concerning parole?

Mr. Faguy: I would say right away that communications could be improved. We are not communicating well enough within the service between what we call correction officers, classification officers and parole officers. Opinions are expressed by job instructors who are at the same time responsible for security. The job instructor, as well as the classification officer, give an opinion on the needs of the inmates, on his problems, and indicates whether the inmate should receive temporary absence. There is communication and participation, but it is still not good enough. As we go into the living-in concept, all will have to participate on a daily basis.

Senator Thompson: Is a directive sent to all, including the guards, in connection with any decision affecting parole?

Mr. Faguy: No directive is sent that a person shall be involved in parole recommendations. However, it is part and parcel of the evaluation within the Penitentiary Service.

Senator Hastings: Are you having any difficulty introducing this new attitude among the staff?

Mr. Faguy: At one point I was wondering what the attitude would be among the correctional staff, and what percentage of them would be suitable for the living-in concept. I have been across the country and have seen every institution twice within the last year. I met with the classification officers, chief classification officers, psychologists and psychiatrists, and asked the question, "What percentage of the staff would be suitable to become living-in officers after a short period of training, training on the job, with you people on top of the situation?" All but one said, "Seventy-five per cent of the staff are able to do it and will be pleased to do it; but give them a bit of training first, and put them into a positive situation." We hope that 75 per cent of our staff will qualify to become living-in officers, will participate in the program, and, we hope, will accept it. There was reluctance at the beginning to make changes.

Senator Hastings: There is always reluctance to change.

Mr. Faguy: Yes, particularly in accepting the unknown. People think it might affect their careers or that they will be out of a job. I recently made a film, and became an actor for a few hours. I arranged for officers of the service to come to Ottawa and ask questions, which I answered. We can now send the film to every institution and say, "This is what the commissioner is saying about the new program. This is what your role will be and what your chances of promotion will be." At the end of the film we ask that if there are any questions, they should be sent in and would be answered in newsletter form, and everyone would see the question and our answer.

With good communication and training, I believe that the majority of our staff will fit in.

Senator Thompson: With respect to communication, our committee sent, with your concurrence, 15 copies of an invitation

to submit written briefs on parole. Could you tell us what measures were taken to ensure that all inmates had access to this invitation?

Mr. Faguy: As I recall, senator, we did write to all the institutions asking them to make sure that opinions were received from the inmate population so that they could be provided to this committee. It was also requested that the questionnaire submitted by this committee be completed and returned.

Senator Thompson: Would it be possible to check as to whether correspondence submitted by inmates has been forwarded in sealed or unsealed envelopes, and whether future correspondence by way of submissions will be forwarded in sealed or unsealed envelopes?

Mr. Faguy: As you know, any correspondence to a senator comes in an unopened envelope; it is uncensored. This is a regulation. We may have had one or two occasions when this was not done and, if so, I regret it, but the regulation right now is that any mail addressed to a senator is to be unopened, as it is to me.

Senator Thompson: So that there was no censorship of those submissions?

Mr. Faguy: Not if they have been addressed to a senator. If correspondence is addressed to the secretary of the committee, then that is another matter. Only senators are entitled to privileged communication and we must make that distinction. We had one case where I became somewhat suspicious that some one was using a member of the Senate staff, so to prevent this type of thing happening we insist that the senator to whom the correspondence is addressed be identified.

The Chairman: What we are concerned with, Mr. Faguy, is this: We should like to have any submissions or recommendations by any prisoner or prisoners sent to us. At some stage we will probably send individual senators to different institutions rather than taking the whole committee, and preparatory to that we should like to have a list of the interested parties to be seen at the various institutions.

To this end, I wonder if your offices could get this information to the inmates and have them address any correspondence directly to me as chairman of this committee. This would facilitate our hearings at the institutions.

We are not concerned that members of your staff would do anything to the correspondence, but there may be a lingering suspicion on the part of an inmate writing to us that if he is relating some critical remarks to this committee he may be punished. If this were so, then we would not receive the information with which to make our findings. We are not trying to get the inside dope on the prison system; we are simply trying to learn what is going on in the minds of the inmates and how they can be helped.

Mr. Faguy: Mr. Chairman, I should like to get the dope on the penitentiary system myself.

The Chairman: Could you undertake to do that for us?

Mr. Faguy: Yes, I certainly will. I will be absent for some time, but you may communicate with Mr. Braithwaite or Mr. Surprenant, and this information will be supplied you.

As chairman of this committee and as a senator, you are certainly entitled to uncensored correspondence from prisoners, and I will be pleased to co-operate. Could I remind you, though, not to believe everything you read.

The Chairman: You will have to take us on faith in that respect. I can say that in my years of practising criminal law, after I had interviewed my client I always knew I had at least half the story.

Senator Hastings: Could we just turn for a moment to the matter of lifers, Mr. Faguy? You indicated earlier that the lifers were your best risks for temporary absences and also better risks for parole. I wonder if you would care to comment on the conduct, and so forth, of the lifers in the institution?

Mr. Faguy: We have found, through statistics and experience, that lifers are very good inmates: they co-operate and participate in the programs; many of them participate in university courses or other educational courses in an attempt to improve themselves, thereby becoming better citizens. We have had, as you will see in our reports, many lifers out on temporary absence and have encountered very few problems. Also lifers have a very small rate of recidivism, whereas, when we talk about our own people, with regard to the 43 per cent coming back who have been in federal institutions, the rate is I think, about two per cent. So the recidivism rate for lifers is very low.

Senator Hastings: May I point out that the two per cent who come back do not come back for murder.

Mr. Faguy: That is right. This is again an indication that these people are willing to participate. We have some figures we must be sure to include in our report to the Senate. Out of a total of 220 inmates serving life, indefinite sentence, and classified as dangerous sex offenders, granted 5,986 absences, there were 12 negative incidents. Some were inebriated, another inmate remained at large, another was involved with an ex-inmate and there was a bit of a problem there. Another failed to adhere to regulations, another was apprehended in a city other than where he was supposed to be, another was just a minor incident. Then there was an inmate found in a beer parlour where he was not supposed to be; then another was unlawfully at large, and returned late. All these 12 were negative incidents, and there was nothing serious.

Senator Hastings: That is out of 5,000?

Mr. Faguy: Out of 220 inmates and 5,986 temporary absences granted to these 220 inmates. These are lifers, indefinite sentences, or dangerous sex offenders.

Senator Hastings: Would you say they qualify for parole?

Mr. Faguy: Please, I am not on the parole side. It is unfair to ask me. I am afraid I do not know. I would leave that to the parole side.

Senator Hastings: From your description of their conduct, do they seem to be exemplary?

Mr. Faguy: In the case of these people, where there were 12 incidents, these are minor, they are more violation of regulations and rules, than anything else, because we have to protect ourselves.

The Chairman: We can ask the witness a question on the figures, but I do not think we should ask him to comment on the meaning of the figures. This is something we could put later on to someone else.

Senator Thompson: Could I come back just to parole and the application for parole? If an inmate wanted books or some other background to prepare his application for parole, are these provided for him?

Mr. Faguy: We provide all the literature they want, except subversive literature; otherwise, we are free with our literature. We also provide the legislation. For instance, we make sure that the Penitentiary Act is available, also the Parole Act and the Criminal Code. If in any case these are not there, it is through some inadvertence, but these are available to the inmates.

Senator Thompson: So the right to apply for parole is safeguarded?

Mr. Faguy: Oh yes. It is up to the inmate to apply for parole, and then it is up to the parole side to refuse or reject; it is not for us.

Senator Thompson: But he is free?

Mr. Faguy: Yes, he is free to ask for parole. As you know, some of them would want parole earlier than when they are eligible for it. This goes on all the time. Some of them write to me because they have been rejected, and I have to remind them that I am not a parole person and that they must turn to the parole side.

Senator Thompson: Assuming that Parole turns a man down because he has to get some further training, how does that relate to the custodial staff? How is it implemented?

Mr. Faguy: It is referred to our people, specifically to the classification officer for that inmate. Then, if we agree that this type of training is needed and it is available, we will do it. If it is not available, there could be a question of transfer to another institution. This could come into consideration. We try to fit the needs of the inmates, and more and more so.

Senator Thompson: I think we have asked this question before, but I would like to ask what is the attitude of the custodial staff to the Parole Board.

The Chairman: That is not fair, senator. You cannot ask that question; you cannot ask one service under the same head to comment on another. It would put him in an impossible situation.

Senator Thompson: I accept that, Mr. Chairman.

Mr. Faguy: We are working close together, senator.

Senator Thompson: Does the parole officer ever give a talk to the custodial staff about his problems or vice versa?

Mr. Faguy: In some areas, for instance in reception, there has been some staff training relating with the parole officers. As I mentioned, we think there are ways and means to improve the close liaison and co-operation between the two services. I have met with the chairman of the Parole Board, and we have agreed to study this specifically, to go to our field people and ask them for suggestions

and try to get in a better program with closer liaison and co-operation.

Senator Hastings: Mr. Chairman, before we adjourn, I would like to have an opportunity to thank Mr. Faguy. I should point out to the committee that Mr. Faguy is taking his first holiday in four years. We wish you a happy vacation, Mr. Faguy, and, in saying this, may I express the hope that you have made special arrangements for the custody of Mr. Geoffroy when he returns?

Mr. Faguy: I have no comment, sir.

The committee adjourned.

Appendix "A"

A PRESENTATION TO THE
STANDING SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

by

P.A. Faguy

Commissioner

Canadian Penitentiary Service

Mr. Chairman, Honourable Senators:

I am happy to have this opportunity to provide you with the views of the Canadian Penitentiary Service in relation to its role in the administration of the Parole Act and the implications for individualized treatment and training programs for inmates.

The provisions of the Canadian Penitentiary Act and Regulations in relation to the treatment and training of inmates are in many respects allied to and linked with the provisions of the Parole Act in achieving what I am certain is the mutual objective of both Services, namely, the successful social re-integration of offenders as law-abiding and productive citizens.

The importance of close liaison and cooperation not only between the Canadian Penitentiary Service and National Parole Service, but also between officials along the whole continuum in the administration of Criminal Justice is considered vital if the total system is to operate in an efficient and effective way.

There should be a pre-disposition report and a judge's report which should properly form part of the correctional record of an offender and be made available to correctional authorities. It would be extremely helpful if the Judge could set forth reasons for the sentence imposed. Such information would greatly assist the offender, the Canadian Penitentiary Service and National Parole Service to plan an individualized program in line with the needs of the inmate and the "reasons" for the sentence as outlined by the Judge.

I support fully the position of the Canadian Committee on Corrections, with reference to the concept of parole being seen as an integral part of the correctional process and the acknowledgement that "treatment demands continuity and flexibility, including flexibility in determining whether a particular individual should spend all or part of his sentence in the community or in an institution. Treatment demands a coordination of knowledge about the individual offender."

If one accepts the view that parole is a continuation of correctional treatment and the function of the Board is to determine the portion of the sentence which is to be spent in the community and the kind of control and supervision which will be needed, the implications of another recommendation of the Canadian

Committee on Corrections, namely, that dealing with administrative union of the Canadian Penitentiary Service and National Parole Service can be seen as a valid proposition.

In addition to facilitating the development of unified correctional policy and programs and the attendant benefits to treatment and training of inmates, there would be increased potential for more effective use of staff, improved career planning and opportunities for advancement.

For the inmates there would be greater continuity of appraisal, treatment and program planning. The result would be a blend of professional staff from the National Parole Service coupled with the practical institutional experience of Penitentiary staff. Finally, there would be basic savings as a result of common personnel and financial services, office services and some common staff pools.

The Canadian Committee on Corrections in relation to its recommendation for administrative union of the Penitentiary and Parole Services observed:

"The need for a coordinated service from the admission of the offender to penitentiary to final release from parole or statutory conditional release should also be expressed in the administrative organization of the correctional services that are the responsibility of the Government of Canada.

Many aspects of these two services could be coordinated. Staff training could be carried on jointly. The pre-release hostels being opened by the Penitentiary Service might also serve parolees. Joint plans for citizen participation are indicated. It is suggested that a Director of Corrections within the Department of the Solicitor General should be appointed to administer both these services." The major provincial correctional systems are organized along similar lines.

The Manual of Correctional Standards issued by the American Correctional Association has the following to say about coordination of institutions and parole (pp. 35-6):

"Another step toward the fullest practicable coordination of a state's correctional services is to integrate institutions and parole as far as possible. This is wholly logical, since the period spent in the institution and that on parole are part of the same sentence, one of the institution's chief missions is to prepare prisoners for parole, the success or failure on parole depends in large part on the quality of that preparation. The chief reason why parole and institution systems have not been more closely coordinated administratively in the past is that integration of services with a mutual function has been sacrificed to ensure parole boards the maximum of independence in their quasi-judicial decisions to grant and revoke paroles.

Examples of jurisdictions where institutions and parole are in the same department, with adequate provisions for independence of the paroling authority, are the U.S. Department of Justice; the New Jersey Department of Institutions and Agencies; Division of Corrections, Wisconsin Department of Public Welfare; the Michigan Department of Corrections; and the California Department of Corrections. It can be stated categorically that this type of administrative setup is feasible and economical, and promotes proper coordination of institutional and parole services." Similar

patterns exist in the more progressive correctional systems in Europe.

In 1967, the Management Consultants firm of P. S. Ross & Partners recommended, after investigation, a number of changes in the basic organizational design for the Solicitor General Department.

Referring to the long range organization of the Department, the objectives were as follows:

"To establish the National Parole Board as an independent quasi-judicial and advisory body.

To provide for the organizational integration of correctional programs at headquarters.

To continue the development of the regional and program units."

The Report suggested that the major changes of the reorganization would take place at the headquarters level of the Correctional Services. The Parole Service would no longer report to the Chairman of the National Parole Board, but to a new Director of Corrections.

Ross, in making its recommendation for an integrated organization for correctional programs within the Department, found particularly interesting an extract from a lecture given in Toronto by Professor Norval R. Morris, Director of the Centre for Studies in Criminal Justice, University of Chicago Law School, as follows:

"... If the view of the evolution of prison I have offered is broadly correct, certain inexorable organization consequences flow from it for correctional services. The link between institutional and non-institutional correctional processes grows closer and requires over-all planning... It is hard to plan wisely for such continuous institutional and post-institutional correctional processes... unless there is the closest of ties between those responsible for these services."

"... There should be a Director of Corrections... with responsibility for the treatment of all convicted offenders..."

"... Perhaps it is an overstatement to urge that this is the only possible administrative structure capable of achieving these uncontested ideals of continuity of treatment. It is often alleged that close liaison between collaborating independent agencies can achieve this result; some years of close observation of correctional practice in Australia, the United Kingdom, the United States and several Asian countries where such friendly cooperation between separate departments is claimed has led me to a contrary view."

In recognition of the principle of integration and coordination of individualized treatment and training programs for inmates, the Canadian Penitentiary Service and the Parole Service have been actively involved in developing practical applications of the principle since July, 1970. The first such exercise took place in Alberta when we entered into agreement with the Parole Service whereby parole officers of the Edmonton and Calgary Offices in Alberta interview all persons sentenced by the Courts of that province to two years or more. Using predetermined criteria, the parole officer decides the initial placement of the convicted person as to whether he should be directed to the maximum security penitentiary at Prince Albert or the medium security institution at Drumheller. This early involve-

ment by the parole officer provides both the Penitentiary Service and the Parole Service with accurate detailed information which is helpful in planning a suitable training program in the institution and in long-range planning for possible release on parole. The Parole Service officer completes part one of the cumulative summary while institutional classification officers subsequently complete part 2A, for the information of the Parole Service. The awareness of the inmate of the early involvement of the Parole Service in discussing and planning with the institutional authorities and the inmate himself, a program based upon his needs, implies a commitment on the part of the inmate if he wishes to be successful in obtaining parole. This kind of three-way involvement, by its very nature, embodies informal monitoring features available to the three parties. The highly satisfactory results of this initial project have led to the decision to extend the procedure to the Atlantic Provinces and to Saskatchewan and Manitoba. Planning meetings have already been held in these regions.

Discussions have also taken place with the Parole Service, in relation to Day Parole and Temporary Absence. Day Parole is granted under the authority of the Parole Act while Temporary Absence is granted under the authority of the Penitentiary Act. In the past, each Service has exercised its prerogative independently under the appropriate legislation. Efforts to have the collective judgement of appropriate members of both Services prevail when the absence is likely to be part of a community program extending beyond fifteen days, should result in a more effective application of the correctional principle involved in the development of community based programs. To enhance and ensure further cooperation, it would be helpful if a parole officer could be posted in each institution.

Temporary Absences have increased sharply since 1969 when 6,278 were granted to 1971 when 30,299 were granted; over 50 per cent of this number is for employment and education purposes. The failure rate while on Temporary Absence is running at less than 1 per cent. 81 per cent of those on extended Temporary Absence are employed in the community. 65 per cent of this number had applied for parole and 20 per cent were granted parole. This information is based on a relatively small, but nonetheless representative sample of Temporary Absences.

Concern has frequently been expressed in relation to the high prison population in Canada. The Canadian Committee on Corrections recommended that every effort should be made to reduce the prison population and recommended the use of alternatives to prison in the administration of sentencing policy. Increased use of probation facilities and the use of parole have been emphasized. In the field of probation, Parliament has, by way of the Omnibus Bill of 1968-69, given effect to recommendations concerning probation. In the field of parole, also, several of the Committee's recommendations have been implemented. Bill C-218, dealing with arrest and bail has also helped in this regard.

The Treatment and Training Programs currently being developed in the institutions operated by the Canadian Penitentiary Service place heavy emphasis on the utilization of professional staff in staff development programs and in supervision of lay staff who are being increasingly involved in and given responsibility for elements of

inmate training programs. We are introducing the Living Unit Concept of staff employment, which breaks down the inmate population into small groups with the assignment of a staff team to each group on a permanent basis. The main goals of this program are to improve communication between staff and inmates, acceptance of self-responsibility by inmates, shared participation in planning programs, and to provide a climate which will enhance treatment. The type of environment which this program will foster should aid in the inmate's personality growth and development through increased responsibility and cooperative action. It is hoped that physical/custodial requirements will be lessened as relationships are established — i.e., external control will be replaced by self-control, which carries over to community situations when the inmate is released. The staff team will be composed of classification officers and correctional officers. The team will have responsibility for the management of the individual programs for each inmate in the Living Unit, including discipline, earned remission, pay, visiting, temporary absence and parole recommendations.

The development and utilization of community resources in inmate training programs are being facilitated greatly by the formation of Citizen Advisory Committees and the increasing involvement of volunteers who make important and valuable contributions, not only in the community, but also by visiting the institutions and enhancing the content and value of the social and cultural aspects of institutional programs. More than ten thousand citizens have been visiting our institutions on a regular basis to participate in a wide variety of programs designed to prepare the inmate for his ultimate return to the community. For example, at Beaver Creek, the Advisory Committee includes the Mayor of Gravenhurst, and inmate drawn from the Inmate Committee, an ex-inmate who is now a successful business man and a number of leading citizens. They meet at least once a month and on quarterly basis, they have meetings with the total population of the institution, including inmates and staff. With the help of the Citizens Committee, the inmates and the local Ski Association run a successful ski resort.

Inmate pay scales are currently being studied with a view to bringing them more in line with the minimum wage prevailing in the community. A pilot project has already been approved at William Head, where an inmate training building will be constructed using inmate labour and paying the minimum wage. In such circumstances, however, inmates will be asked to pay reasonable charges for room and board and clothing. The usual deductions for income tax, hospitalization and unemployment insurance benefits will also be applicable to those in receipt of wages or salary equal to or exceeding the prevailing minimum wage rates. Under these circumstances, an inmate will be able to accumulate a reasonable nestegg for the day of his release, while at the same time he will be able to build up unemployment insurance credits which will stand him in good stead, should he be unsuccessful in obtaining employment immediately after release.

A new project has just been approved which will provide for the first time a formal Life Skills Course for inmates who are in need of additional knowledge and training in problem solving behaviours. This course has been adapted to the correctional setting with the assistance of the Saskatchewan NewStart Corporation.

Another innovation relates to academic and occupational upgrading at Collins Bay Institution. A contract has been negotiated with St. Lawrence Community College to provide for the total requirement for academic upgrading in addition to a number of polytechnical courses. Changing job market requirements frequently dictate the necessity of short-term or specialty training. Under the contract basis, the Service is able to maintain a much higher degree of flexibility in meeting the needs of inmates at any given time. It would appear that the motivation and interest of inmates is maintained at a higher level by the presence of instructors who are not part of the institutional establishment. The drop-out rate has been reduced by two-thirds of the traditional rate. Similar contractual arrangements, on a smaller scale, are in effect at several other locations in the country. For example, Commission Scolaire Régionale de Missisquoi (Cowansville).

I think it may be of interest to mention also an example of a cooperative arrangement with Industry and the National Parole Service. I refer to the Metal Fabrication Course, conducted by Douglas Aircraft, at Warkworth Institution. Trainees were pre-selected by a joint committee of the Parole Service and the Penitentiary Service, in order that trainees might be granted parole in principle prior to embarking upon the three-month course. This project worked out very well and notwithstanding the lull in the aircraft industry as the course neared completion, a substantial number of trainees obtained employment with the firm. A second course, commenced within the last few days, will be patterned along similar lines as the first. In the Quebec Region, there are a number of similar endeavours involving Industry, Parole Service and the Penitentiary Service.

Mention should be made of the important contributions of the private after-care agencies in relation to the development of correctional programs within the institutions and in the community and also in relation to their contributions in public education and the development of a body of public opinion and attitudes which permit of experimentation and progress in the whole Criminal Justice system. I think it is now an accepted fact that the after-care services, both of a counselling and residential nature, are being recognized as an essential part of the correctional system. It is with satisfaction also that we note that the government has accepted the recommendation of the Canadian Committee on Corrections in recognizing the need for a partnership with voluntary agencies and that the partnership involves a major direct service function on the part of the voluntary agencies in relation to the government correctional services.

Corrections is a continuum from the police to the courts to the institutions and ultimately parole—each part has its continuing effect on the whole. No parole system can rise above the institutional program that precedes it.

Although about 80% of inmates in federal institutions have been in some correctional institution before, approximately only 43% have ever been in penitentiary previously and returned to penitentiary. Much has been said about recidivism rates indicating they point to a failure of the institution. On the contrary, it is possible to indicate that if the total correctional system including probation and parole is operating as it should be, then the fact that there is a

high proportion of "recidivists" within the institution only emphasizes that the total system is functioning effectively. Daniel Glaser's book entitled "The Effectiveness of a Prison and Parole System" contains the following pertinent observations which I quote:

"The proportion of releasees returned to prison tends to be higher:

- a. where probation is used extensively, so that only the worst risks go to prison (although this use of probation may make the long-run recidivism of all felons lower);
- b. where parole is used extensively, so that many poor-risk parolees are released on a trial basis;
- c. where a large proportion of parolees are returned to prison when they have violated parole regulations but have not been charged with or convicted of new felonies."

"It is the prevailing opinion in corrections that the public is best protected from crimes by released prisoners by:

- (1) sentencing and parole policies which enable most prisoners to leave prison by parole rather than by outright discharge;

- (2) an optimum amount of surveillance of parolees, rather than none at all or a gross excess (as well as more positive supervision functions, of course, such as counselling and assistance);

- (3) some revocation of parole for nonfelonious behaviour." However, the more these three policies are adopted, the greater will be the proportion of released prisoners returned to prison.

I would suggest that the future of corrections lies more and more in the community, where the inmate must one day return to take his place as a law-abiding and productive citizen. In the meantime, he remains a citizen and the institution should be seen as part of not apart from the community. He must develop an understanding and an appreciation of the social and economic context within which he must live his life in harmony with his fellow citizens. For these reasons, I suggest that the course upon which we are presently embarked is the correct one. However, I realize there remains much to be done in developing community focused correctional programs since traditions and attitudes are sometimes slow to change. Rehabilitation of the criminal is the surest and most economical way of achieving our objective of the protection of society. The best protection of society is rehabilitation.

Appendix "B"

TEMPORARY ABSENCES

I The total number of Temporary Absences granted for

1969 — 6,278
 1970 — 18,008
 1971 — 30,299

Total no. of Temporary Absences granted for the 3 year period

— 54,585

II Number of Temporary Absences granted by reason for the period September 1971 — December 1971.

	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>TOTAL</u>
Visit Wife	130	203	152	228	713
Visit Family	385	333	303	1473	2494
Visit Friend	101	121	130	277	629
University Educ.	20	60	59	26	165
Technical Educ.	142	129	158	79	508
Other Educ.	69	121	178	52	420
Specialized Programs, i.e. AA, X-Kalay, Native Brotherhood, Religious Services	142	580	845	590	2157
Transition to Community	378	205	158	254	995
Work Release	514	469	866	543	2392
Job Seeking	93	297	109	85	584
Sports, participant	341	118	117	123	699
Sports, spectator	35	11	74	48	168
Family Marriage	7	7	10	4	28
Family Illness	34	28	24	25	111
Family Death	10	23	15	17	65
Other Family Occasions	10	11	12	7	40
Medical	41	76	32	39	188
Psychiatric	8	9	15	13	45
TOTAL	2460	2801	3257	3883	12401

III Number of Inmates failing to return from Temporary Absence for the period September 1971 – December 1971.

	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>TOTAL</u>
ATLANTIC REGION	1	1	1	—	3
QUEBEC REGION	2	3	1	4	10
ONTARIO REGION	21	12	6	13	52
WESTERN REGION	5	5	7	8	25
TOTAL	29	21	15	25	90
TOTAL T.A.'S GRANTED	2,460	2,801	3,257	3,883	12,401
% of Inmates Failing to Return	1.2%	0.75% ($\frac{3}{4}$ of 1%)	0.46% (Approx. $\frac{1}{2}$ of 1%)	0.64% (Approx. $\frac{2}{3}$ of 1%)	0.73% (Approx. $\frac{3}{4}$ of 1%)

IV Number of known crimes committed while on T.A. for the period September 1971 – December 1971.

	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>TOTAL</u>
ATLANTIC REGION	—	2	—	—	2
QUEBEC REGION	—	—	1	—	1
ONTARIO REGION	2	1	—	4	7
WESTERN REGION	2	2	1	—	5
TOTAL	4	5	2	4	15
TOTAL T.A.'S GRANTED	2,460	2,801	3,257	3,883	12,401

Percentage of offenders per number of T.A.'S

SEPTEMBER – 0.16% approx. $\frac{1}{6}$ of 1%
OCTOBER – 0.18% approx. $\frac{1}{5}$ of 1%
NOVEMBER – 0.06% Less than $\frac{1}{10}$ of 1%
DECEMBER – 0.1% $\frac{1}{10}$ of 1%

Overall average for four months – 0.12% approx. $\frac{1}{8}$ of 1%

V Temporary Absence statistics relative to those offenders serving a sentence of life – an indefinite sentence – dangerous offenders.

	No. of Lifers	No. of T.A.'s	No. of Indefinite	No. of T.A.'s	No. of Dangerous Sexual Offenders	No. of T.A.'s	Total T.A.'s
TOTAL BY REGIONS							
ATLANTIC REGION							
Max. Security	4	18	—	—	1	6	24
Med. Security	8	61	—	—	1	6	67
Min. Security	9	149	—	—	—	—	149
SUB-TOTAL	21	228	—	—	2	12	240
QUEBEC REGION							
Max. Security	3	4	—	—	—	—	4
Med. Security	36	99	5	21	—	—	120
Min. Security	2	14	—	—	—	—	14
SUB-TOTAL	41	117	5	21	—	—	138
ONTARIO REGION							
Max. Security	6	42	—	—	1	1	43
Med. Security	27	641	—	—	1	3	644
Min. Security	9	237	1	2	3	59	298
SUB-TOTAL	42	920	1	2	5	63	985
WESTERN REGION							
Max. Security	7	51	3	6	7	47	104
Med. Security	46	3497	11	260	7	58	3815
Min. Security	15	526	3	25	4	153	704
SUB-TOTAL	68	4074	17	291	18	258	4623
TOTAL	172	5339	23	314	25	333	5986
TOTAL By Security Classification of All Regions							
Max. Security	20	115	3	6	9	54	175
Med. Security	117	4298	16	281	9	67	4646
Min. Security	35	926	4	27	7	212	1165
TOTAL	172	5339	23	314	25	333	5986

VI A typical day (November 30, 1971) illustrating the reasons for granting Temporary Absences to inmates receiving this privilege on a regular basis.

Employment	146
Educational Purposes	69
Other	68
TOTAL	283

Amended by G. Surprenant—February 23, 1972

Number of known crimes committed while on T.A. for the period September 1971 – December 1971.

	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>TOTAL</u>
ATLANTIC REGION	—	2	—	—	2
QUEBEC REGION	—	—	1	—	1
ONTARIO REGION	3	1	—	2	6
WESTERN REGION	<u>3</u>	<u>2</u>	<u>1</u>	<u>—</u>	<u>6</u>
<u>TOTAL</u>	6	5	2	2	15

DETAILS

SEPTEMBER 1971

- | | |
|--------------------|--|
| Ontario Region (3) | a) armed robbery and forgery
b) common assault
c) car theft and possession of offensive weapon |
| Western Region (3) | a) break and enter
b) forging and uttering
c) break, enter and theft |

OCTOBER 1971

- | | |
|---------------------|--|
| Atlantic Region (2) | a) break, enter and theft
theft of motor vehicle
mischief causing danger to lives
taking motor vehicle without owner's consent
unlawfully at large
b) break, enter and intent to commit |
| Ontario Region (1) | a) discharging a dangerous weapon (held in custody in U.S.A.) |
| Western Region (2) | a) drunkenness
b) impaired driving (see note below) |

NOVEMBER 1971

- | | |
|--------------------|---|
| Quebec Region (1) | a) non-capital murder (1874 – SANSCOUY, J.G.) |
| Western Region (1) | a) robbery with violence, theft of auto,
unlawfully at large |

DECEMBER 1971

- | | |
|--------------------|--|
| Ontario Region (2) | a) theft of over \$50.00
b) car theft |
|--------------------|--|

NOTE: One of the inmates concerned was serving a life sentence for capital murder, i.e. 3507 – TURNER, F.M. from Matsqui Institution. While on temporary absence leave, he was charged with impaired driving.

APPENDIX "C"

REPORT ON INMATES SERVING
LIFE, INDEFINITE SENTENCES OR CLASSIFIED AS
DANGEROUS SEXUAL OFFENDERS
WHO HAVE BEEN GRANTED
TEMPORARY ABSENCES UP TO
JANUARY 1972

SUMMARY

1. A total of 220 inmates serving life, indefinite sentences, or classified as dangerous sexual offenders were granted 5,986 Temporary Absences with 12 negative incidents occurring.

*Negative Incidents while on T.A.**St. Vincent de Paul*

One inmate unlawfully at large

Federal Training Centre

One inmate returned to the institution inebriated

Collins Bay Institution

- (a) One inmate unlawfully at large
- (b) One inmate was involved with an ex-inmate
- (c) One inmate failed to adhere to regulations

Joyceville Farm Annex

One inmate was apprehended in a city other than the destination of his Temporary Absence

Beaver Creek

One minor incident occurred

Saskatchewan

One inmate found in a beer parlour

British Columbia Penitentiary

One inmate unlawfully at large

William Head

One inmate returned late

Agassiz

- (a) One inmate was found drinking and returned to Maximum Security
- (b) One inmate had a misunderstanding with his girl friend's mother over his relationship with her daughter

2. Of the 5,986 Temporary Absences granted, 694 Temporary Absences were with escort and 5,292 Temporary Absences were without escort.

3. During the years 1968 to January 1972, a total of 8,374½ days leave were granted.

- (a) Unlawfully at large — 3
- (b) Returned to institution inebriated — 2
- (c) Involved with ex-inmates — 1
- (d) Failed to adhere to regulations — 1
- (e) Inmate was apprehended in a city other than destination of his Temporary Absence — 1
- (f) Minor incident — 1
- (g) Inmate found in a beer parlour — 1
- (h) Inmate returned late — 1
- (i) Inmate had a misunderstanding with his girl friend's mother — 1

	No. of Lifers	No. of Temporary Absences	No. of Indefinite	No. of Temporary Absences	No. of Dangerous Sexual Offenders	No. of Temporary Absences	Total Temporary Absences	Escort		Negative Incidents While on Temporary Absence	Total Number of Days					TOTAL
								With	Without		1968	1969	1970	1971	1972	
Total by Regions																
ATLANTIC REGION																
Maximum Security	4	18	—	—	1	6	24	13	11	Nil	—	—	10	36	—	46
Medium Security	8	61	—	—	1	6	67	23	44	Nil	—	4	12	151	42	209
Minimum Security	9	149	—	—	—	—	149	30	119	Nil	—	6	30	225	22	283
SUB-TOTAL	21	228	—	—	2	12	240	66	174	Nil	—	10	52	412	64	538
QUEBEC REGION																
Maximum Security	3	4	—	—	—	—	4	3	1	1	—	—	—	5	—	5
Medium Security	36	99	5	21	—	—	120	48	72	1	—	18	18	178	14	228
Minimum Security	2	14	—	—	—	—	14	1	13	—	—	1	6	15	6	28
SUB-TOTAL	41	117	5	21	—	—	138	52	86	2	—	19	24	198	20	261
ONTARIO REGION																
Maximum Security	6	42	—	—	1	1	43	4	39	—	—	—	5	85	21	111
Medium Security	27	641	—	—	1	3	644	124	520	3	2	5	212	785½	10	1014½
Minimum Security	9	237	1	2	3	59	298	51	247	2	—	22	175	166	11	374
SUB-TOTAL	42	920	1	2	5	63	985	179	806	5	2	27	392	1036½	42	1499½
WESTERN REGION																
Maximum Security	7	51	3	6	7	47	104	58	46	2	—	22	15	106½	4	141½
Medium Security	46	3497	11	260	7	58	3815	230	3585	—	92	166	1190½	3600	—	5054½
Minimum Security	15	526	3	25	4	153	704	109	595	3	—	29	278	544	29	880½
SUB-TOTAL	68	4074	17	291	18	258	4623	397	4226	5	92	217	1483½	4250½	33	6076
TOTAL	172	5339	23	314	25	333	5986	694	5292	12	94	273	1951½	5897	159	8374½
Total by Security Classification of all Regions																
Maximum Security	20	115	3	6	9	54	175	78	97	3	—	22	30	232½	25	309½
Medium Security	117	4298	16	281	9	67	4646	425	4221	4	94	193	1432½	4714½	66	6500
Minimum Security	35	926	4	27	7	212	1165	191	974	5	—	58	489	950	68	1565
TOTAL	172	5339	23	314	25	333	5986	694	5292	12	94	273	1951½	5897	159	8374½

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	No. of Lifers	No. of Temporary Absences	No. of Indefinite	No. of Temporary Absences	No. of Dangerous Sexual Offenders	No. of Temporary Absences	No. of Temporary Absences	Escort		Negative Incidents While on Temporary Absence	Total Number of Days					TOTAL
								With	With- out		1968	1969	1970	1971	1972	
ATLANTIC REGION																
Total by Institution																
SPRINGHILL	8	61	-	-	1	6	67	23	44	Nil	-	4	12	151	42	209
DORCHESTER	4	18	-	-	1	6	24	13	11	Nil	-	-	10	36	-	46
DORCHESTER FARM	5	29	-	-	-	-	29	18	11	Nil	-	1	8	25	4	38
BLUE MOUNTAIN	4	120	-	-	-	-	120	12	108	Nil	-	5	22	200	18	245
SUB-TOTAL	21	228	-	-	2	12	240	66	174	Nil	-	10	52	412	64	538
Total by Security Classification																
MAXIMUM SECURITY	4	18	-	-	1	6	24	13	11	Nil	-	-	10	36	-	46
MEDIUM SECURITY	8	61	-	-	1	6	67	23	44	Nil	-	4	12	151	42	209
MINIMUM SECURITY	9	149	-	-	-	-	149	30	119	Nil	-	6	30	225	22	283
SUB-TOTAL	21	228	-	-	2	12	240	66	174	Nil	-	10	52	412	64	538

QUEBEC REGION	No. of Lifers	No. of Temporary Absences	No. of Indefinite	No. of Temporary Absences	No. of Dangerous Sexual Offenders	No. of Temporary Absences	Total Temporary Absences	Escort		Negative Incidents While on Temporary Absence	Total Number of days				
								With	Without		1968	1969	1970	1971	1972
Total by Institution															
ST. V. DE PAUL	3	4	-	-	-	-	4	3	1	1 Unlawfully at Large	-	-	-	5	-
LAVAL MINIMUM SEC.	2	14	-	-	-	-	14	1	13	Nil	-	1	6	15	6
FEDERAL TRNG. CENTRE	7	14	-	-	-	-	14	2	12	Returned Inebriated	-	-	1	19	14
LECLERC	20	64	5	21	-	-	85	33	52	Nil	-	18	15	126	-
ARCHAMBAULT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
STE. ANNE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DES PLAINES	9	21	-	-	-	-	21	13	8	Nil	-	-	2	33	-
COWANSVILLE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
S.C.U. (QUE)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
ST. HUBERT CENTRE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SUB-TOTAL	41	117	5	21	-	-	138	52	86	2	-	19	24	198	20
Total by Security Classification															
MAXIMUM SECURITY	3	4	-	-	-	-	4	3	1	1	-	-	-	5	-
MEDIUM SECURITY	36	99	5	21	-	-	120	48	72	1	-	18	18	178	14
MINIMUM SECURITY	2	14	-	-	-	-	14	1	13	-	-	1	6	15	6
SUB-TOTAL	41	117	5	21	-	-	138	52	86	2	-	19	24	198	20

WESTERN REGION	No. of Lifers	No. of Temporary Absences	No. of Indefinite	No. of Temporary Absences	No. of Dangerous Sexual Offenders	No. of Temporary Absences	Total Temporary Absences	Escort		Negative Incidents While on Temporary Absence	Total Number of days					TOTAL
								With	Without		1968	1969	1970	1971	1972	
Total by Institution																
STONY MOUNTAIN	4	12	1	1	1	7	20	12	8	Nil	—	6	1	14	—	21
STONY MOUNTAIN FARM	5	49	1	3	—	—	52	2	50	Nil	—	1	11	74	4	90
SASKATCHEWAN	1	30	2	5	1	3	38	3	35	Found in Beer Parlour	—	—	—	39	3	42
SASKATCHEWAN FARM	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
DRUMHELLER	16	1047	1	7	—	—	1054	6	1048	Nil	92	165	304	651	—	1212
BRITISH COLUMBIA	6	21	1	1	6	44	66	55	11	1 Escaped 4 Late	—	16	15	67½	1	99½
WILLIAM HEAD	4	114	1	9	1	2	125	31	94	Returns	—	9	108	111	—	228
MATSQUI — MALE	13	2041	3	216	1	8	2265	210	2055	Nil	—	—	558	1996	—	2554
MOUNTAIN PRISON	13	397	6	36	5	43	476	2	474	Nil	—	1	327½	939	—	1267
AGASSIZ	3	135	1	13	2	35	183	32	151	2 Negative Incidents	—	11	121	117	—	249
OSBORNE CENTRE	1	151	—	—	1	116	267	30	237	Nil	—	6	25	198	25	254
WEST GEORGIA CENTRE	2	77	—	—	—	—	77	14	63	Nil	—	2	13	44	—	59
SUB-TOTAL	68	4074	17	291	18	258	4623	397	4226	5	92	217	1483½	4250½	33	6076
Total by Security Classification																
MAXIMUM SECURITY	7	51	3	6	7	47	104	58	46	2	—	22	15	106½	4	141½
MEDIUM SECURITY	46	3497	11	260	7	58	3815	230	3585	—	92	166	1190½	3600	—	5054½
MINIMUM SECURITY	15	526	3	25	4	153	704	109	595	3	—	29	278	544	29	880
SUB-TOTAL	68	4074	17	291	18	258	4623	397	4226	5	92	217	1483½	4250½	33	6076

	No. of Lifers	No. of Tempo- rary Ab- sences	No. of Indefi- nite	No. of Tempo- rary Ab- sences	No. of Dangerous Sexual Offenders	No. of Tempo- rary Ab- sences	Total Tempo- rary Ab- sences	Escort		Negative Incidents While on Temporary Absence	Total Number of Days				
								With	With- out		1968	1969	1970	1971	1972
ONTARIO REGION															TOTAL
Total by Institution															
KINGSTON	2	2	-	-	1	-	3	-	3	Nil	-	-	-	10	1
MILLHAVEN	-	-	-	-	-	-	-	-	-	Nil	-	-	-	-	-
PRISON FOR WOMEN	4	40	-	-	-	-	40	4	36	Nil	-	-	5	75	20
COLLINS BAY	11	564	-	-	-	-	564	71	493	3 Negative Incidents	2	5	199	649	855
COLLINS BAY FARM	1	4	-	-	1	-	19	-	19	Nil	-	-	-	28	28
LANDRY CROSSING	2	93	-	-	-	-	93	4	89	Nil	-	19	88	-	10
BEAVER CREEK	2	17	1	2	-	2	19	6	13	1 Minor Incident	-	-	10	23	1
JOYCEVILLE	8	30	-	-	1	-	33	15	18	Nil	-	-	1½	67	6
JOYCEVILLE FARM	4	123	-	-	2	-	167	41	126	1 Negative Incident	-	3	77	115	-
WARKWORTH	8	47	-	-	-	-	47	38	9	Nil	-	-	11½	69½	4
MONTGOMERY CENTRE	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SUB-TOTAL	42	920	1	2	5	2	985	179	806	5	2	27	392	1036½	42
Total by Security Classification															
MAXIMUM SECURITY	6	42	-	-	1	-	43	4	39	-	-	-	5	85	21
MEDIUM SECURITY	27	641	-	-	1	-	644	124	520	3	2	5	212	785½	10
MINIMUM SECURITY	9	237	1	2	3	2	298	51	247	2	-	22	175	166	11
SUB-TOTAL	42	920	1	2	5	2	985	179	806	5	2	27	392	1036½	42

APPENDIX "D"

Institutions and Inmate Population
Fiscal Years 1966-1967 to 1970-1971

	Inmates on Register					
	1966-67	1967-68	1968-69	1969-70	1970-71	
Atlantic Provinces						
Newfoundland	15	15	19	18	10	Maximum
Dorchester Penitentiary	521	402	364	329	354	Maximum
Dorchester Farm Annex	72	64	59	71	52	Minimum
Blue Mountain Correctional Camp	85	35	34	52	45	Minimum
Springhill Institution (Med.)	—	95	127	206	252	Medium
Springhill Institution (Min.)	52	80	62	—	—	Minimum
TOTAL	745	691	665	676	713	
Quebec Province						
St. Vincent de Paul Penitentiary	860	769	808	431	316	Maximum
Laval Minimum Institution	157	139	130	95	103	Minimum
St. Vincent de Paul Farm Annex	68	73	82	61	—	Minimum
Federal Training Centre	288	299	289	288	333	Medium
Leclerc Institution	407	432	453	458	457	Medium
Valleyfield Correctional Camp	99	45	—	—	—	Minimum
Gatineau Correctional Camp	43	32	—	—	—	Minimum
Cowansville Institution	154	164	211	353	411	Medium
Archambault Institution	—	—	28	225	385	Maximum
Ste Anne des Plaines Minimum Security	—	—	—	59	70	Minimum
Special Correctional Unit	—	27	62	82	51	Maximum
St. Hubert Centre	—	—	16	14	21	Minimum
TOTAL	2076	1980	2079	2066	2147	
Ontario Province						
Kingston Penitentiary	853	757	696	715	684	Maximum
Collins Bay Penitentiary	439	434	445	392	366	Medium
Collins Bay Farm Annex	90	82	81	83	93	Minimum
Beaver Creek Correctional Camp	59	59	67	74	80	Minimum
Landry Crossing Correctional Camp	60	45	56	64	48	Minimum
Joyceville Institution	448	443	430	439	423	Medium
Joyceville Farm Annex	72	67	84	86	54	Minimum
Warkworth Institution	—	92	143	220	303	Medium
Prison for Women	81	74	74	62	88	Maximum
Montgomery Centre	—	—	—	3	15	Minimum
TOTAL	2102	2053	2076	2138	2154	

	1966-67	1967-68	1968-69	1969-70	1970-71	
Prairie Provinces						
Manitoba Penitentiary	409	408	347	—	—	Maximum
Manitoba Penitentiary	—	—	—	372	380	Medium
Manitoba Farm Annex	78	67	106	105	89	Minimum
Osborne Centre	—	—	15	13	15	Minimum
Saskatchewan Penitentiary	617	577	593	457	379	Maximum
Saskatchewan Farm Annex	85	83	79	67	57	Minimum
Drumheller Institution	—	88	141	259	359	Medium
TOTAL	1189	1223	1281	1273	1279	
British Columbia Province						
British Columbia Penitentiary	520	547	499	524	515	Maximum
William Head Institution	137	136	123	138	110	Minimum
Matsqui Institution (Male)	162	186	196	279	300	Medium
Matsqui Institution (Female)	32	36	38	37	—	Medium
Agassiz Correctional Camp	86	58	62	59	58	Minimum
Mountain Prison (Douk's)	14	8	6	—	—	Medium
Mountain Prison (Other)	122	139	136	174	173	Medium
West Georgia Centre	—	—	—	11	15	Minimum
TOTAL	1073	1110	1060	1222	1171	
GRAND TOTAL	7185	7057	7161	7375	7464	

By Type of Security

	1966-67		1967-68		1968-69		1969-70		1970-71	
Maximum Security	3876	54%	3576	51%	3490	49%	2843	39%	2782	37%
Medium Security	2066	29	2416	34	2615	36	3477	47	3757	50
Minimum Security	1243	17	1065	15	1056	15	1055	14	925	13
TOTAL	7185	100%	7057	100%	7161	100%	7375	100%	7464	100%

Prepared by W. Bellman
10 FEB 72.

APPENDIX "E"

INDIANS AND THE CANADIAN PENITENTIARY SERVICE

Approximately 8% of our total inmate population is of Indian ethnic origin.

However, in the four Western provinces, the percentage is considerably higher, ranging from 10% to 26% of the population of a given penitentiary.

The percentage of the population of Indian or Métis is as follows:

<u>Institution</u>	<u>Percentage of Indian or Métis Population*</u>
Manitoba Penitentiary	25
Saskatchewan Penitentiary	26
Drumheller	16.4
B.C. Penitentiary	10
William Head	15
Matsqui	10
Agassiz	20
Mountain Prison	12

*These percentages are based on reports from CPS officials and represent only those inmates who acknowledge having native ancestry. It is estimated, for example, in the Saskatchewan Penitentiary, that there are an additional 10 to 15 percent of the population who probably do have native ancestry.

The Canadian Penitentiary Service is anxious to enter into working relationships with Indian and Métis organizations. For many years little, if anything, was done in this area. However, within the last 12 months we have, by way of example, done the following:

1. *Manitoba*

The Canadian Penitentiary Service, along with the National Parole Service and Departmental Headquarters Correctional Consultation Centre, is developing, with the help of the Indian and Métis organizations within the Province of Manitoba, a demonstration project to provide visiting and consultation services to Indian and Métis inmates at Stony Mountain Institution; the establishment of a Halfway House; and, the development of Indian and Métis Parole Supervisors.

2. *Alberta*

As a pilot project, we have a member of the Native Counselling Services of Alberta, Mr. Chester Cunningham, established in our Drumheller Institution, to serve the Indian and Métis inmates of that institution, as well as performing as a Liaison Officer between them and Indian and Métis groups in the community.

3. *British Columbia*

Through the B.C. Council of Indian Chiefs and Mr. Clarence Dennis, their Legal Programs Officer, we are helping to finance and will participate in, a special planning seminar, to be held later this month, with the express purpose of developing a cooperative, coordinated program for Indians and Métis who are either inmates or parolees.

In addition, we have taken under contract, Mr. Earl Allard, formerly of X-kalay and an Indian ex-inmate, to serve as a consultant on institutional programs for Indian and Métis inmates.

We are concerned that there are not more Indian and Métis members on our staff. We conducted a special recruiting and training program, for approximately 40 Indians, a little over a year ago, 20 for the National Parole Service and 20 for the Canadian Penitentiary Service.

We have been able to retain 11 out of the 20. Their location and function is as follows:

Stony Mountain Institution

- 1 - CX2 - Custodial Officer
- 2 - WP1 - Guidance Officer

Saskatchewan

- 3 - CX2 - Custodial Officers

Drumheller Institution

- 3 - CX2 - Custodial Officers

William Head Institution

- 1 - CX1 - Custodial Officer
- 2 - WP1 - Guidance Officer

March 9, 1972.

APPENDIX "F"

NUMBER of psychiatrists now working in
Canadian Penitentiary Service

	Full-time	Part-time	Contract	TOTAL
ATLANTIC REGION	nil	nil	4	4
QUEBEC REGION	2	1	2	5
ONTARIO REGION	2	nil	5	7
PRAIRIE REGION	1	1	1	3
PACIFIC REGION	1	nil	2	3
TOTAL	6	2	14	22

APPENDIX "G"

AVERAGE MAINTENANCE COST PER INMATE
BY SECURITY TYPE, BASED ON ACTUAL EXPENDITURES

	1966-67	1967-68	1968-69	1969-70	1970-71
TYPE OF SECURITY					
MAXIMUM					
MALE	6229	7580	7597	10393	11040
FEMALE (KINGSTON)	6706	9860	9570	11388	10491
AVERAGE COST	6240	7625	7636	10410	11027
MEDIUM					
MALE	10929	11284	10218	8456	8480
FEMALE (MATSQUI)	—	—	—	13026	32745
AVERAGE COST	10929	11284	10218	8521	8594
MINIMUM					
MALE	3721	4106	5448	3814	5361
AVERAGE COST	3721	4106	5448 (see Note 2)	3814	5361
AVERAGE COST PER INMATE ALL TYPES OF SECURITY (EXCLUDING ADMIN)	7380	8492	8389	8659	9140
ADMINISTRATION OVERHEAD INCLUDES OTTAWA HQ, RHQ AND CSC (Note 1)	535	390	257	630	580
TOTAL AVERAGE COST PER INMATE	7915	8882	8646	9289	9720

NOTE 1: The Administration base varies due to changes in grouping of components over various years.

NOTE 2: The high average cost per inmate in minimum institutions for 1968-69 is primarily due to the opening of the community Correctional Centres with high opening costs and low occupancy rates.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

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THURSDAY, MARCH 9, 1972

**Fifth Proceedings on the examination of the
parole system in Canada**

(Witnesses and Appendices—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue, H.	Hayden, S. A.
Buckwold, S. L.	Lair, K.
Burchill, G. P.	Lang, D.
Choquette, L.	Langlois, L.
Connolly, J. J. (<i>Ottawa West</i>)	Macdonald, J. M.
Croll, D. A.	*Martin, P.
Eudes, R.	McGrand, F. A.
Everett, D. D.	Prowse, J. H.
Fergusson, M. McQ.	Quart, J. D.
*Flynn, J.	Sullivan, J. A.
Fournier, S.	Thompson, A. E.
(<i>de Lanaudière</i>)	Walker, D. J.
Goldenberg, C.	White, G. S.
Gouin, L. M.	Williams, G.
Haig, J. C.	Willis, H. A.
Hastings, E. A.	Yuzyk, P.—30

**Ex officio* members: Flynn and Martin.

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by
the Honourable Senator Croll:

That the Standing Senate Committee on Legal and
Constitutional Affairs be authorized to examine and report
upon all aspects of the parole system in Canada;

That the said Committee have power to engage the
services of such counsel, staff and technical advisers as may
be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized
by the Committee, may adjourn from place to place inside or
outside Canada for the purpose of carrying out the said
examination; and

That the papers and evidence received and taken on the
subject in the preceding session be referred to the Com-
mittee.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, March 9, 1972.

(5)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Argue, Buckwold, Croll, Fergusson, Goldenberg, Haig, McGrand and Thompson—(9).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel; Mr. Réal Jubinville, Executive Director; Mr. Williams Earl Bailey and Mr. Patrick Doherty, Special Research Assistants.

The Committee proceeded to the examination of the parole system in Canada.

The following witnesses, representing the Royal Canadian Mounted Police, were heard by the Committee:

Commissioner W. L. Higgitt;

Assistant Commissioner E. W. Willes, Director, Criminal Investigations.

On motion of the Honourable Senator Haig it was *Resolved* to include in this day's proceedings the "Statement of the Role of the Royal Canadian Mounted Police in the Administration of the Parole Act" and "Statistics relating to Warrants of Suspension, Revocation and Forfeiture as issued pursuant to the Parole Act" both of which were provided by Commissioner Higgitt. They are printed as Appendices "A" and "B" respectively.

At 11.55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, March 9, 1972.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Commissioner Higgitt, would you care to make an opening statement?

Commissioner W. L. Higgitt, Royal Canadian Mounted Police: Mr. Chairman, first of all I wish to say that we are very pleased to be here. I would like to introduce my colleague, Assistant Commissioner Willes. Between us we may be able to answer any questions that you have. If we cannot do so, we will certainly undertake to provide the answers as soon as possible in written form. You were kind enough to ask us to submit a brief, which we did a week or two ago, and I believe you have copies before you.

Parole, generally, includes several facets, the Criminal Records Act, the actual Parole Act and two or three other aspects which I am sure you realize come under the umbrella of the Parole Board.

In so far as the responsibility of the Royal Canadian Mounted Police is concerned, we really perform an assistance role. Some of you may not know this, but in so far as parole is concerned it has been a policy for many years that when a person is convicted of an offence within our jurisdiction and sentenced to a penitentiary term, which is basically two years or more, our office, in whichever area this occurs, automatically sends a report directly to the Parole Board at that time. This is one of the documents which form the Parole Board's basic file and is submitted, as I say, automatically.

In addition to that, of course, we respond to requests of the Parole Board for additional information with respect to individuals under consideration for parole. We update reports, or endeavour to meet in the best manner we can whatever request is received. That applies basically also to the Criminal Records Act and to the various categories within those two acts, such as remission of sentences of various types and remission of the lifting of a driving permit. We can be asked to report on the general reputation and background of the person who has applied for restoration of his permit. We become involved in other matters of that nature. There are several different categories, but they eventually receive the same treatment. The Parole Board asks us to assist basically in telling them the kind of person with whom they are dealing and how he is accepted and looked upon by the members of his community. We are asked for our opinion of him at the particular time, and questions of that nature. We respond to these requests as best we can.

I wish to emphasize as much as I possibly can that we take this as a very serious responsibility. No matter what the request is, we respond to it under circumstances that we judge to be the least likely to cause embarrassment to the person concerned. For example, when we receive a request under the Criminal Records Act in connection with the consideration of a pardon and we interview a number of people, we do it with the very greatest of discretion. We first see the person himself, to find out whether he has given references and who among those referees know about his criminal record. If they do not know already, we do the very best we can to see that they do not become aware of it through our inquiries.

Basically, we make our inquiries in civilian clothes. However, this is not an ironclad rule, because in some instances one of our members in a rural setting can make inquiries much more openly in uniform than if in civilian clothes. It would cause a number of eyebrows to raise if a person, who was usually seen in uniform, were seen on the street talking to someone, and for some reason or other he happened to be in civilian clothes. The whole thing is done in a way which we judge to be the most beneficial to the person concerned, to his family, his relatives, and so on.

It is difficult to separate parole from the Criminal Records Act, and it has been questioned whether the Royal Canadian Mounted Police are the best people to carry out this type of inquiries. I have no doubt that there are views pro and con on this point. It has been decided by the government as a matter of policy, that we should do it.

It is a good policy for the reasons I have just said, and because we are spread throughout the country. We can accomplish things by way of inquiry with much less fanfare than strangers going into these communities and making those inquiries.

First, we probably do not have to make very many inquiries. We may already know most of the answers. A civilian coming into the area might cause many more questions to be asked than would be the case if one of our members, who local people see every day, merely had a chat with someone and in so doing sought the information they required. For that reason I believe the people concerned are given the best protection by means of our carrying out this kind of inquiry.

Mr. Chairman, I could go on, but I do not really know what you would like me to zero in on.

The Chairman: I think we can now proceed to questions.

(The "Statement of the Role of the Royal Canadian Mounted Police in the Administration of the Parole Act" is printed as Appendix "A")

Senator Thompson: In your submission, you said that the automatic reports were designed to give information on the person himself.

Commissioner Higgitt: Yes.

Senator Thompson: I assume, then, that it is not just his criminal background.

Commissioner Higgitt: That is absolutely correct.

Senator Thompson: Is it a casework background that you are getting? Is it a history of his social standing? Would you give us the limits of the report?

Commissioner Higgitt: I will be pleased to do that. First, we undertake inquiries to obtain the circumstances surrounding the offence. Generally speaking, we know them, but sometimes facts which are not part of the evidence of a case are meaningful for the purposes of parole. We inquire about family circumstances, various pressures, and things of that nature. We obtain the circumstances of the offence, the background and reputation of the person within his community prior to committing the crime, and also facts on his associates, which can also be meaningful.

We inquire about the man's reputation, which is an important factor in why the crime was committed. We ascertain the effect of the crime on the victim and, if it was a crime of violence, how violent it was, and things of that nature.

This information is obtained from persons of good standing in the community and, to some extent, from knowledge which we already have of the person. Our members are in close touch with most people in the community.

The report is factual, and investigators include only what they have been told by those interviewed or what they know from close associates. If we give an opinion ourselves, we say that it is our own opinion. We do not say that, "This man is so-and-so." We say, "Because of these things, we think that this is a point of importance to bear in mind."

I should like to emphasize that these reports are as factual as we can make them. We take no particular side. We try to describe the situation as we see it from the widest possible base.

Senator Thompson: Mr. Commissioner, probation officers and parole officers, on the whole, have had background training in social work, psychology and human behaviour. Does the RCMP constable get this kind of training?

Commissioner Higgitt: Yes, he does. I would not say that he gets as much as does a professional social worker, who might well have had years of nothing but this kind of experience. For years, part of the training of RCMP constables has included lectures by the best professionals, psychiatrists, university professors, and people of that nature.

Senator Thompson: Is it something like a six-week course?

Commissioner Higgitt: Not only are these lectures arranged at the basic training level, but there are also advanced training courses at all levels. Over the past several years there has been increased emphasis on this aspect of training.

Senator Thompson: The background of RCMP constables interests me. I believe that the basic requirement is Grade 12, is it not?

Commissioner Higgitt: We get into some difficulty when we talk about Grade 12, which does not mean quite the same thing all across the country. In some areas it means senior matriculation level, and in others it does not. In the vicinity of 70 to 80 per cent have their matriculation. Basically, it is at the matriculation level.

Senator Thompson: Presumably for some period they work at a station. Do they undergo continuous training and education?

Commissioner Higgitt: Basically they have matriculation, and many have university entrance. Quite a number have university credits and some have university degrees. Obviously, the number who have university degrees is not as great in the overall, but it does apply to some. They receive their full basic training, which extends from six to seven months and is intensive, including both physical and academic training. In addition to all the other things, they learn about social relations, and the other things which have been mentioned are emphasized by experts in the various fields.

From there they go to training detachments or what might be called training offices, which means that they go to a large office where there is a staff of probably 10, 15 or 20 in charge of a person who has been specially selected as having had unusually good training, and who is unusually adept at bringing along young people, training, developing and watching over them. Under the guidance of these persons, constables are in a training atmosphere for another, year, although not necessarily always at the same office.

From these offices, where particular emphasis is placed on training, they are gradually fed into the work. They go out under very close supervision and gradually are given responsibility. They then go to areas of greater responsibility, until eventually they are capable of doing their normal job. Some progress faster than others, of course. That is the basic training which everyone, officers and men, receive.

We then have a program whereby, after three to five years of service, members of our force are brought back to our training divisions and are given courses in various specialties. These courses may involve, for example, community relations, the type of thing we are discussing here, enforcement of highway traffic regulations, or courses in a discipline such as science, or whatever. These types of courses take place at intervals of three, four or five years throughout the man's stay with the force.

In addition to this, since the early thirties, we have had what we call an in-service university program. I believe we were the first organization within the federal government, or at least one of the pioneers, to implement such an in-service program. Mr. Willes here is a product of this program. Members of the force with four or five

years' service and who, by our judgment and assessment, are, perhaps, a little better than average and who seem to have the potential, are sent to this university program on a full-time basis. Preferably these would be individuals who have some university credits attained on their own by attending night school, and so on. We have at the moment enrolled in this program in the neighbourhood of 60 members of our force. These individuals have been members of the force anywhere from six to ten years, although usually six, and they are graduating at the rate of about 20 a year. In addition to those individuals, we have some 800 members of our force pursuing various university courses, again on their own time, but with our encouragement.

Senator Croll: Eight hundred out of a total of what?

Commissioner Higgitt: The total number in the force?

Senator Croll: Yes.

Commissioner Higgitt: In round figures the total number of uniformed people in the force is 10,000. I am discounting clerks, stenographers, and so forth. The total number of policemen, if you like, in round figures, is 10,000.

Senator Thompson: I believe you said many of your recruits have a university background.

Commissioner Higgitt: Yes, we have individual recruits with several university credits.

Senator Thompson: What would be the proportion of individuals coming to Regina with a university background?

Commissioner Higgitt: There are many with a university background, but those with university degrees, I believe, totalled 38 last year. I am not too sure on that figure, but I could confirm it. In addition to that, many have completed first year university or have attained some university credits and, for one reason or another, perhaps financial, could not continue. In other words, our recruits have matriculation-plus.

There is a point worth making in relation to the automatic report sent to the Parole Board upon conviction of a person with a sentence of more than two years, and that is that this is really the basic document in the parole file, and the matter is then handled by members of the Parole Service. If the Parole Service, for some reason or another, decides the individual is not eligible for parole, then we may never hear of it again. However, a year or two years later we may get requests to amplify on our report, and, indeed, professional case workers may themselves go out occasionally and enlarge on it.

Senator Thompson: Does the officer suggest in that basic document that the prisoner is suitable for parole? Would he go as far as that?

Commissioner Higgitt: I do not believe that would be part of the report.

The Chairman: The officer is simply to supply information, as opposed to opinions.

Commissioner Higgitt: Yes, and if we give an opinion we would have to make it clear that it is only an opinion; we would much prefer to give an opinion as to why the crime was committed. Parole is part of the rehabilitative process and, as such, is out of the policeman's purview at that moment.

Senator Thompson: And, conversely, the police officer would not state in this document that the prisoner is not suitable for parole. Is that right?

Commissioner Higgitt: No, I do not believe we would do that. The document deals with facts only. One of the reasons for this is that a man may commit a particularly vicious crime in the eyes of the community and, as a result, receive a lengthy sentence. However, six or seven years later it is found the situation is very much changed. This report then gives the picture as it was at the time of the offence, against which the change can be judged. For example, the individual six or seven years later may be completely docile and it might very well indicate he has undergone a tremendous change of heart. The reverse could presumably equally be true.

Senator Fergusson: Commissioner Higgitt, there seems to be a great many people who believe that the increase in crime in Canada is brought about by the release of offenders on parole. Does the RCMP have any records which would show whether this is, in fact, so or not?

Commissioner Higgitt: I do not believe we would, and I do not think the number of people released on parole could significantly increase the crime rate.

Senator Fergusson: But articles in the news media indicate that some people do believe it.

Commissioner Higgitt: That may very well be, but the parole system—and this is a little out of my line—is not responsible for the increase. Certainly, when you are dealing with parolees or potential parolees you are dealing with a rather unusual cross-section of the population and there are obviously going to be some disappointments. The disappointments, of course, are the ones who get the headlines.

I would not agree with any statement which held that the parole system has caused a significant increase in crime; it is simply not true. The numbers themselves are so small that they could not be significant. The success rate—and a more accurate figure could be obtained from the Parole Service—is, I believe, somewhere in the neighbourhood of 90 per cent.

Senator Thompson: You do not have the exact figures?

Commissioner Higgitt: We do not keep such figures, but I am sure the Parole Board would have them. I do know from personal knowledge that the success rate is quite high, but, unfortunately, the one or two disappointments are the ones who get the headlines.

I think we just have to accept that there are going to be some disappointments under any parole system; it is human nature. We cannot be right all the time, and it would be improper to penalize those who can benefit because a few might disappoint us.

Senator Croll: Are you and your colleague products of the force?

Commissioner Higgitt: Yes, senator, and I would like to make the point here that there is no other way for people to get to these desks except by starting right at the bottom and coming all the way through.

Senator Croll: Why do you say that?

Commissioner Higgitt: Because there is no other way.

Senator Croll: But your job is open; the government makes the appointments and could decide to appoint somebody from outside who is an alleged specialist. That could be done, although it has not been done. Is that not what you are saying?

Commissioner Higgitt: In theory, if you are thinking of the Commissioner's chair, obviously the government could make that appointment. It does make that appointment, but for many years it has been from none other than within.

Senator Croll: I hope so.

Commissioner Higgitt: I meant to say that the regular senior personnel in the force—all ranks, be it corporal, sergeant, inspector or the Commissioner—have all worked up from the bottom.

Senator Croll: That has been one of the strengths of the force.

Commissioner Higgitt: That has been one of the great strengths of the force.

Senator Croll: I am also very happy that today you used the term "Royal Canadian Mounted Police" and not the short term.

Commissioner Higgitt: That is what it has always been, sir.

Senator Croll: Well, that is what it is to me anyway.

Commissioner Higgitt: Superimposed on what I have just said, if we need a specialist, for example, a scientist in one of our laboratories, we could certainly hire a doctor of science, but he is not a policeman.

Senator Croll: Usually you ask the questions, and this is our opportunity to ask them! The thing that is troubling me and others here is this. With the new act, which rubs out certain convictions over a period of time, as you know . . .

Commissioner Higgitt: This is now the Criminal Records Act.

Senator Croll: Yes, the Criminal Records Act. There comes a time when the man out in the free world is asked the question, "Have you ever been convicted?" We have rubbed out his conviction, but he is then in a great dilemma. He has been convicted, and the temptation, of course, is to say "No" to that question, because he knows that it has been eradicated from the record. Yet there is no way of conveying that. What is your idea of the kind of question we could ask which would let him tell the truth without disclosing a record? Can you think of a question?

Commissioner Higgitt: We have thought about this. You can think of something like, "I have no record because I have been pardoned", but if anybody says that he might as well say what the record is.

Senator Croll: I wrote down this morning, "Have you a record that has not been expunged by process of law?" Would you just think about that for a moment.

Commissioner Higgitt: I think that on some of the official employment forms now there is a question which reads something like this, "Have you a record for which a pardon has not been granted?"

Senator Croll: No, I do not agree.

Commissioner Higgitt: I think there is something like that that has been used.

Senator Croll: On what forms?

Commissioner Higgitt: That I cannot tell you.

The Chairman: I think the Public Service.

Commissioner Higgitt: "Have you a record for which a pardon has not been granted?" If he has been given a pardon he can say "No" to that.

Senator Thompson: Why could you not just ask, "Have you a criminal record?"

The Chairman: Because he has got a record. The record is sealed under the act.

Commissioner Higgitt: The record is sealed, and under certain specific circumstances the minister can, by direction, direct that record be disclosed.

Senator Croll: The word "pardon" bothers me. I have not given it a lot of thought, but I just spoke about it to the chairman yesterday. I rather think of "process of law" as being a more dignified way of dealing with it. With the word "pardon", I think of the pardons of the Jimmy Hoffas rather than other people.

The Chairman: When this was discussed during the passage of the Criminal Records Act there were two or three problems. As you

know, this probably gets into civil rights. For example, a credit-granting agency probably has a copy of the man's record. It is doubtful whether the federal government has the authority to make them change that. Old newspaper files will disclose it, but you cannot say, "We are going to pick up all the newspaper files and have the record of any conviction in them removed," because this starts to rewrite history. There are many problems involved.

What it was finally decided to do with the sealing of it was to have the federal government do it first, and then, hopefully, have them get the provincial governments to follow by prohibiting asking a question that would force a person to disclose the existence of a record that has been sealed. I think they decided to use the phrase that the Commissioner just gave. I think at the present time that is on the Public Service forms, where we do have control. It was hoped that others would follow suit.

Commissioner Higgitt: Of course, the word "pardon" is actually used in the Criminal Records Act; that is the term.

Senator Buckwold: First of all, I want to say that Commissioner Higgitt is a product of the Saskatchewan force and was raised in that great province.

The Chairman: To the credit of Saskatchewan.

Senator Buckwold: I say this because some people in Western Canada are apparently concerned about this change in title.

The Chairman: I do not know whether that has anything to do with parole, but we will let you get away with it this time.

Senator Buckwold: We just want you to know that this product of Saskatchewan is certainly, I know, very interested in maintaining the name "Royal Canadian Mounted Police".

My first question is this. What is the relationship of the RCMP with municipal police forces so far as the parole system is concerned? For example, is the automatic report done by the RCMP in larger Communities, or is it done by the local police force? What is this relationship?

Commissioner Higgitt: It is done by the police force in whose jurisdiction the offence took place. If it was in Saskatoon it would be dealt with by Saskatoon City Police, who also would put in this kind of automatic report.

Senator Buckwold: Therefore, I would guess that because the great bulk of offences are in the urban areas, in fact there are not too many RCMP reports that go in.

Commissioner Higgitt: There are many that go in. We would have to get the statistics on it, but in a city like Toronto, for example, obviously the local force would have many more than we would in some other area; that is true.

The Chairman: Unless it was an offence you were involved in.

Commissioner Higgitt: Unless it was an offence we were involved in.

Senator Buckwold: Drug offences, for example, that you might be involved in?

Commissioner Higgitt: Yes.

Senator Buckwold: Perhaps we will talk about crime statistics later. The growth of our urban areas and the increasing number of offences in those areas would, in fact, have a limiting influence on the activity of the RCMP in this whole field, not only in the automatic first report but also in the parole follow-up.

Commissioner Higgitt: Yes, we have this. If we speak of the initial, basic automatic report, what you have just said is accurate. Any follow-up comes to us from the Parole Board, under the Criminal Records Act, for example, or an application for clemency, and we make the report irrespective of the jurisdiction. There may be one or two exceptions.

Senator Buckwold: Where a parolee has to report to a police centre, is that done through the local police force or through the RCMP station in the area?

Commissioner Higgitt: That would depend on the direction given by the Parole Board at the time of parole. It would be on his parole document. It probably would be to report to the local police force.

Senator Croll: Even if it were one of your offences, as in the case of drugs?

Commissioner Higgitt: It would depend on what the Parole Board decided, but basically it would be to the local police force. That is becoming less common now, as in the case of most parolees the Parole Board have professional parole people stationed across the country. The majority of these reports are handled by the parole personnel themselves and they are getting away—wisely, I think—from the idea of the person coming constantly to the police force. These people are being handled by local parole officers. These officers exist in all the big centres, but in some of the rural areas these things are performed by the local police force.

Senator Haig: In Saskatoon you would perform the function?

Commissioner Higgitt: No, I think there is a parole officer in Saskatoon.

Senator Buckwold: You spoke of the role of the policeman in a parole period. You indicate you prefer the person not to report to the police force but to the parole officer. How important do you think this is?

Commissioner Higgitt: The policy is that that is what they do, and I think it is a good policy.

Senator Buckwold: Would you tell us more about your feeling on that point?

Commissioner Higgitt: Our feeling has to be based on what we think is going to give the parole program the best possibility of success. Though many people may not believe this, the

policemen are very interested in parole. If we can get the parole system working successfully, our work is reduced, since we reduce the crime rate we have heard about this morning. After all, prevention is a policeman's main preoccupation.

To re-establish himself in the community, it may be better that he be supervised by a professionally trained Parole Service officer, someone who is not really attached to a police organization. Every policeman is interested, not only officially and because it is policy, but because it is the thing to do, and he takes an interest in these things and does everything possible to assist the parole officer. If we get information, for example, that a parolee is getting into areas which we think are dangerous to him, we would get in touch with the parole officer, to tell him he may have a problem there to look into. He would do the same, if he could help us in some other way.

There is a community of interest here and a co-operation that exists—informally, but it exists—and I think it is very useful and very meaningful.

In some areas, of course, because of geography, the person has almost got to report to one of our offices or to another police office, but we do the very best we can about this. He does not necessarily have to walk into our office; he may do it by telephone or we may see him from time to time during the course of other duties. It is not a case of his having to stand at our door at 9 o'clock on a certain morning and be registered. We arrange these things in the best way we can. Whether a policeman is a better or worse person to give service to these people, during their period of rehabilitation, is a matter of differing opinions; but the policy of the government and of the Department of the Solicitor General is that this should be supervised as far as possible by the Parole Service.

Senator Buckwold: On the local police force, I would guess, with some reason, that the great bulk of these automatic reports go in from the local police force.

Commissioner Higgitt: Yes.

Senator Buckwold: Although your submission would lead us to believe that the RCMP is doing this.

Commissioner Higgitt: In our own jurisdiction, yes.

Senator Buckwold: It was not differentiated, keeping in mind that, as in my opinion, the RCMP as a force is generally much better trained and more selective in recruiting than a municipal police force, do you feel that this job is being adequately carried out at the local level?

Commissioner Higgitt: It is rather difficult to answer that. To be honest with you, I have not read the reports of other police forces. I think I could say, as a general answer, senator, that our experience is that some police forces have a little more expertise than others; but the police forces do accept this as a serious responsibility and deal with it in that manner, and I hope they are as helpful as we try to be, and I think they are. It would be difficult to say who produces the best reports.

Senator Buckwold: I was not trying to put one against the other.

Commissioner Higgitt: It is very difficult to answer. All I can say is that I hope they are good. The Parole Board might be able to make an assessment on the quality of these reports, but we have not had the opportunity to do that.

Senator Thompson: I notice the concern, Mr. Commissioner, that you had in connection with getting these facts for the parole background—the person dressed in civilian clothes, and that type of thing. Do you know if that same directive applies to other police forces?

Commissioner Higgitt: I think that the same desire and the same policy apply to other police forces. All police forces approach this in a similar light, as to the best way to meet the situation, what is best for the person concerned. I am sure they do the best they can.

Senator Thompson: There is no directive? Would it come from the Parole Board to you, or where does it come from?

Commissioner Higgitt: There is no directive from the Parole Board to tell us how we may or may not make an inquiry. The request is that we make an inquiry under the Parole Act, or under some specific heading, to try to obtain certain specific information on a parole or pardon. It is within our own policy and practices to decide how we should do this, and I presume other forces do the same thing. There is collaboration between other forces. If I may take Saskatoon as an example, if it occurred outside the boundaries of Saskatoon but the person was really a Saskatoonian, obviously we and the Saskatoon City Police would have to collaborate in order to produce a report showing the type of person this is. There is a great deal of co-operation.

Senator Croll: I agree with your view that we are making progress when the parolees are turned over to trained experts in the rehabilitative field and you gradually withdraw. Would you like to pick any city you like in Canada and give me the number of such people in that city?

Commissioner Higgitt: I am afraid I do not have the establishment of the Parole Board here. I know that in large centres there is a number of them, but not always necessarily in large centres. They are increasing across the country, but I am sorry that I do not have the numbers.

Senator Croll: Do you have them, Mr. Chairman?

The Chairman: This would involve two or three things, and it would be a little difficult to get the figures just in that way because half of the parole supervision is presently contracted out to volunteer agencies such as the Elizabeth Fry Society and the John Howard Society. I think the Parole Board could get that for us, and I think there will be further statistical information available.

Senator Croll: I came across some figures on that a couple of weeks ago in connection with one of our larger cities, and I was staggered at the small number available in this field. With 5,000 parolees last year, the numbers of such people available were almost nothing. They could not possibly cover the field. We are not moving in that direction with any sort of speed.

Commissioner Higgitt: I know, senator, from my personal knowledge that the Parole Service has been expanding for the last year or two and opening offices across the country. I know they are also making use of the services of these voluntary organizations, but I am sorry I cannot go further than that.

The Chairman: And there are the provincial probation services.

Commissioner Higgitt: Yes, there are provincial probation officers and so on, but I cannot give any more detailed figures.

Senator Croll: What troubles me in connection with what you said is the difference between passing on information to the parole officers and seeking out information about the parolee. What is your role in this field?

Commissioner Higgitt: Well, if a parolee were in our area, we would undoubtedly know it, but we would not automatically seek out information concerning him because all of that has already been done or else he would not be on parole. We would already have given all the information that we had available, and the Parole Board, in their wisdom, would say, "This man is entitled to parole," and they would parole him under whatever conditions they would wish to impose. So, other than knowing that he was in the area, we would not physically seek out information unless we were requested to do so. But then, if he became involved in crime, or if he were convicted of a crime, of course we would have a responsibility to report that during the normal course of our police function. Also if we found in the course of our general work that he was becoming involved in a very unwholesome area, and if we became aware that he was, perhaps, falling back into his former ways, I think we would have a responsibility to let his supervising officer know this so that he could take corrective action and encourage this man to change his ways and get back into the proper stream. However, we do not automatically go out and investigate a man just because he is a parolee. We simply do not do that. This would be against the spirit of parole. But when he comes to our attention and we think we can still be helpful, it then becomes part of our preventive role.

The Chairman: How would this information normally be dealt with? Would it be a case of formally writing to the parole officer or would it be a case of casually contacting him and saying, "I think you had better watch Joe; I saw him with so-and-so yesterday and I think they are planning something."?

Commissioner Higgitt: It would be done on the basis of the circumstances. A minor thing might involve just a quiet word to the parole officer. But if it were something more serious it would be the basis of a report and would come, of course, to the Parole Board as well as to the local officer.

Senator Thompson: Mr. Commissioner, do you have a research division in the RCMP? We have heard these questions about the number of parolees who have committed further offences, and you said that you did not know but that you assumed that the Parole Board would know the figures. Do you have a research division?

Commissioner Higgitt: Yes, we do, but in connection with that we would not really research a parolee because the Parole Service could do it much more quickly. They would have that information for us, and all we would have to do would be to phone and ask them. We would not ourselves expend time on duplicating that. But to answer your question: Yes, we do have a research department.

Senator Thompson: We understand that the Parole Board has one information officer and that their research facilities are not too adequate.

Commissioner Higgitt: There is a research section in the Solicitor General's department, and I would be very much surprised, if I made a request to the Parole Board as to how many parolees had committed offences in the last few years, if they could not come up with a fairly accurate figure fairly quickly. We would not ourselves keep that kind of information because we are sure that they have it.

Senator Thompson: Your statement in connection with your desire for the effectiveness of parole and your encouragement of it is, I think, very important and very reassuring to the public. I know that some people are saying that it must be very disheartening for the police forces in Canada when a fellow goes into the penitentiary having committed a serious crime and he comes out after a short period. While he perhaps readjusts, the fact that he has served a short period is a bad example to others who might be tempted to commit a similar crime. What is your opinion on that?

Commissioner Higgitt: Well, senator, I suppose there are as many views on that as there are policemen and people. All I have to say is to emphasize what I said to start with, and that is that policemen, contrary to what many people might think, are very much interested in parole and rehabilitation. After all, this is what it is all about—prevention. And while there might be an individual who might be mildly disappointed because somebody was released earlier than he might think was suitable, that is no indication that the police are opposed to the parole system. You can say that sometimes we are disappointed about a sentence that is given too; but we divorce ourselves from that and we know that there are going to be failures. We accept that, but I do not think that the failure rate has reached the point where any policeman might be alarmed. I think it justifies the greatest possible development and study, and if we can get better ways of rehabilitating people, then let us have the better ways. This may be one, and it may have to be adjusted with experience; but policemen basically divorce themselves from what the courts and quasi-judicial boards do. They take the stand that they are doing the best they can; we feel we are doing the best we can; and neither of us is always right. We do support the parole system. It is obvious that we must, and that it is the sensible thing to do.

Senator Croll: Commissioner, Higgitt, when I was in the army they mugged me and took my fingerprints, and at the end they discharged me. Who received the benefit of those fingerprints and that mugging? Was it your department?

Commissioner Higgitt: The army received the benefit.

Senator Croll: They are still with the army? They were not passed on to you?

Commissioner Higgitt: No.

Senator Croll: I feel much safer now.

The Chairman: You are not alone.

Commissioner Higgitt: They are still with the army, unless there was some reason for them to have been passed on.

Senator Buckwold: My last question is a rather difficult one. I raised this matter briefly yesterday. It involves the whole crime scene. I have read the statistics in a column written by Fred Kennedy, and I indicated he was with the *Winnipeg Tribune*. However, I notice from my notes that it was the *Calgary Albertan*. It indicates that during the last ten years we have moved into a period of enlightenment in our treatment of those who have committed offences. We have humanized our Criminal Code, and we are making better use of probation and our parole system. We have done all kinds of things which, I presume in the long run, will make our country safer. And yet, as expressed by this columnist, the public is very concerned because, in spite of all that has been done, we have seen a tremendous increase in crime. I presume these statistics are correct. They indicate that in 1962 the number of offences against the Criminal Code was 514,986, while in the year 1970 it was 1,110,066. In the eyes of the public, this is a startling statistic, especially when some of us have been anxious to improve the conditions. We see a tremendous increase in the number of violent crimes, such as murder, which rose from 217 in 1962 to 430 in 1970, attempted murder from 83 to 260; while assaults have risen from 27,818 to 77,338.

As Canada's top police officer, and I would say one of the finest in the country, certainly in my opinion, what is your assessment of this situation? Are we doing something wrong? We are aware that there has been a growth in population and, naturally, these statistics would rise. In your opinion, is there a relationship between these startling statistics and what has been occurring in this period of enlightenment? Should the public be concerned about what legislators are doing in this period of enlightenment? Are we heading in the right direction? I would appreciate any comments you can make.

Commissioner Higgitt: Honourable senators, the statistics are basically correct. It is true that in the last ten years there has been almost a doubling in the crime rate. This is a very serious matter so far as we are concerned. Particularly serious is the fact that this includes crimes of violence. This is distressing to all policemen and, of course, to our force in particular.

The answer to this question is a very difficult one. When you ask if there should be concern on the part of the public, I certainly feel they need to be concerned. Perhaps if the public were more concerned there might be less of an increase in the crime rate. It is easy to say that the reason for the increase is that the courts are not imposing as stiff sentences as they used to, or that parole is easier, and so on. But this does not answer the question at all; this is such a small part of the problem. I feel there is a different attitude towards social responsibility. The conditions in our country have changed. There is more money available. Mobility and communications have changed. People can commit crimes and in less than two hours be literally thousands of miles away. I feel this is part of the problem. The opportunities to commit crimes are greater than they used to be.

When you consider vehicle offences, impaired driving, and so on, these have increased by leaps and bounds, as well as the number of people who have been killed on our highways. These statistics are absolutely unbelievably shocking. However, when the police force endeavours to enforce our highway laws, when we become more aggressive in our enforcement there is tremendous public reaction. They do not like us interfering in their lives, stopping and checking them, this sort of thing. We run into this problem all the time. These matters are never important until they happen to you or one of your family.

The drug cult has expanded unbelievably in the last five years. The saddest statistics of all are the heroin addicts in this country. For years these statistics remained basically static, between 4,000 and 5,000 heroin addicts. The statistics for the so-called hard line addicts remained constant for years, right up until the year 1966. Today we have upwards to 15,000 so-called hard line heroin addicts in this country. The numbers are increasing and the ages are decreasing every year. Our youth are involved in the scene. This is also indicated in these statistics. For example, there were 148 pounds of heroin seized by our department in the last twelve months, or up until December. On the illicit market this is worth about \$75 million, on the basis of 400 capsules to the ounce, and the ounce is cut four times. They sell these capsules at \$20 each. This is \$75 million worth of heroin which has been put on the illicit market. Crimes have to be committed to pay for these capsules. Very few heroin addicts are gainfully employed and the only way they can pay for them is by stealing.

Heroin addicts taking a capsule each day at \$20—and many of them are taking two or three a day, at \$50 or \$60 total—have to steal an object such as a radio of \$100 value to be able to sell it for \$25 to someone who knows it is stolen. The cost of these crimes to the Canadian people rises to astronomical figures. This is one very sad aspect of it.

We do not have an answer, except in more rigid enforcement, but there is a limit to all this sort of thing. I do not know whether my confrere can add to this by explaining what we think are the causes of this crime. The social attitude must have something to do with it.

Senator Buckwold: We are not here as a commission studying crime, but the parole system. I am attempting to relate it to the

increase in crime. Would it paraphrase you correctly as saying that the so-called humanizing of the treatment of criminals has not been a contributing factor to this significant increase?

Commissioner Higgett: Well, certainly not a significant contributing factor.

Senator Buckwold: Yes, I think that was the key point to answer my question.

Commissioner Higgett: I think that must be true. We have, I think, about 7,000 inmates and if each were released it would not go significantly towards the hundreds of thousands of crimes. So it must be a limiting factor. I have no doubt that perhaps the inclination towards handing down more humane sentences than was the case formerly may have a percentage effect. This is perhaps not quite as preventive, in that sense, as it might be. However, again, I do not believe that is the answer. I am more inclined to believe it is a public attitude.

Senator Thompson: I realize that comparisons with other countries cannot always be indicative of rates of crime, but do you have statistics for such comparison? Senator Buckwold referred to the age of enlightenment in connection with prison reform. He suggested this might be connected with the increased rate of crime. I understand that although this enlightened attitude does not exist in Russia they have an increased rate of crime. Perhaps it is also true of other states in which there is an increase in crime, although there is an oppressive prison system.

Commissioner Higgett: I do not have those statistics available. I cannot really speak of Russia, except to say I understand that they are also suffering an increase in crime. I can tell you, from personal knowledge and from speaking with those concerned, that in the United Kingdom, in so far as the Metropolitan Police are concerned, and in the United States, basically from statistics provided from time to time by the Federal Bureau of Investigation—in those countries and Canada the increase in crime is almost equal in terms of percentage. There has been a tremendous increase in all three countries.

That does not quite answer your question, but it is not a situation peculiar to Canada, which makes it all the more complex. It seems to be a trend, certainly, beyond our borders.

Senator Thompson: The report of the Fauteux Committee on Remission Procedure states:

It has come to our attention that some law enforcement authorities follow the practice of holding warrants of arrest for inmates of penal institutions, the acknowledged intention being that, after these inmates have served their current sentences, they will be re-arrested and required to face the charges contained in the warrants.

The report continues:

... We cannot condemn this practice too emphatically.

In the judgment of the British Columbia Court of Appeal in *Regina v. Parisien*, (1971) 4 W.W.R., page 81, it was held that the practice of holding warrants of arrest for persons serving prison sentences should be condemned. This case showed it had actually taken place.

In view of the condemnation—by the Fauteux Commission and by the British Columbia Court of Appeal judgment in *Regina v. Parisien* dated April 20, 1971—of the police practice of holding arrest warrant for prison inmate until release, I would like to ask if appropriate directives or instructions have been issued to officers of the force to cease and desist in this practice which contributes little to rehabilitation.

Is everything possible being done to facilitate the disposition of all charges against an individual prior to imprisonment?

Commissioner Higgett: Senator, in reply to that, without having had a moment to research it, I cannot believe that would happen in many cases. Firstly, it would become the responsibility of the attorney general of the province. In British Columbia it would be the Attorney General of that province. Certainly they would know of the warrants that were outstanding.

There is a section in the Criminal Code, as I am sure you know, which allows a person if he so wishes, to dispose of any other offences which have taken place in other parts of Canada. I am speaking strictly from my recollection of the law. A person still has the right not to have it disposed of then, but to have it dealt with separately at a later time, if he so wishes. In that case, a warrant would have to be held.

Conceivably a warrant could be received after conviction. Somebody could be convicted in Vancouver of a breaking and entering charge, sentenced to two or three years in a penitentiary, and weeks, months or a year later it could become known that the same man committed an offence in Toronto a year earlier. A warrant would then be outstanding for him. It would be forwarded to the police force concerned, and it would be a matter for the two attorneys general concerned to decide how the matter should be disposed of.

I would be surprised if any police force purposely held on to warrants without the matter being fully discussed with the Attorney General or the Attorney General's Department. There would be no point in holding a warrant and suddenly pouncing upon someone and executing it.

There could be circumstances where a warrant does exist, and in some instances warrants are executed, upon a person's release from penitentiary, for another offence.

Generally, a person has the right to have known offences dealt with at the time. The senator might have in mind a particular case which gave rise to his question. I am not aware it is a problem, and it is certainly not a practice followed by us; it would be contrary to our purpose. Our purpose is to clear up cases as quickly as possible, and in so doing we execute a warrant.

Senator Thompson: Otherwise you would be withholding evidence?

Commissioner Higgitt: Yes. If a person were in the penitentiary, there would have to be legal discussion on what should be done with the warrant. I am sure that the attorneys general of some provinces would say, "We will withdraw the charge." Such things happen. That is really the best answer I can give. As a practice, we do not hold on to warrants. However, there might be some peculiarity associated with a particular case where this may have occurred.

The Chairman: It is difficult to preserve evidence for a long time.

Commissioner Higgitt: That is so.

Senator Thompson: The British Columbia case before the Court of Appeal was last year.

Commissioner Higgitt: I am not aware of the case. There have been cases, however. I am not sure whether they are still before the courts. I recall a case where a person in British Columbia was in the penitentiary for an offence, and investigations concerning a much more serious offence had not been concluded. We were involved in that matter, but we did not have sufficient evidence to issue a warrant. Some time later—I think it was last year—the Attorney General decided that we had sufficient evidence which pointed to the same person having committed the much more serious offence. His sentence was at the point of expiring, and I think he was re-arrested and a new charge laid. But that warrant was not one that had been held. The evidence had not been proved up to that point. It was a new and continuing investigation. I should like to give an assurance that it is not our practice to hold on to warrants.

Senator Thompson: Would the commissioner give statistics of the number of warrants of commitment upon suspension of parole executed by the force in 1971? Has the number of suspension warrants increased over the last five years, and are any of them outstanding?

Commissioner Higgitt: Perhaps the chairman will be kind enough to allow me to obtain as many statistics of that nature as I can. We have handled a number of cases, but we have not broken them down to the number of warrants issued. It might be difficult to obtain that information, but we will try to do so. If it is agreeable, we can supply the information to the chairman. It will take a little research, but I would not want to be inaccurate in answering the question.

Senator Thompson: Are any of those warrants outstanding?

I should like also a reply to my question regarding statistics on the number of warrants of commitment upon revocation of parole executed by the force.

The Chairman: Replies are sought to questions involving suspension, revocation and forfeiture. Forfeiture is no problem, because the persons concerned are usually locked up.

Commissioner Higgitt: We will endeavour to obtain the best statistics we can, and we will make them available to the chairman.

(See Appendix "B")

The Chairman: Are there any further questions?

Senator Thompson: Normally a parolee, whose parole has become forfeited by reason of conviction for a further indictable offence, is in detention when the force is asked to execute a warrant of committal upon forfeiture of parole. Do cases arise where the offender has to be picked up? Are any of these warrants outstanding? What happens to such warrants if a person cannot be located?

Commissioner Higgitt: In reply to the last part of the question, a warrant never becomes outdated. A warrant prevails until it is executed.

Senator Thompson: A person may have served a sentence of 15 years and is then located after having settled into a community and rehabilitated himself. Is there any flexibility in connection with a warrant?

Commissioner Higgitt: A case such as the one you mention would be unusual, which would almost certainly be discussed with the Parole Board—I would say almost certainly. While a warrant always remains valid, it does not mean that it will be brutally enforced in such cases. Such a case would be discussed, because it would be regarded as an unusual one.

Senator Buckwold: In your opinion, is Canada's parole system adequately meeting the needs of the community?

Commissioner Higgitt: So long as there are repeaters and others entering our penitentiaries, I suppose one could say no. I am sure that the Parole Board and the Solicitor General would be among the first to admit that we have a long way to go before we have a perfect parole system. I do feel the Parole Service, so far as I am able to judge, is certainly well based and well operated within the limits of knowledge and manpower we have at the moment.

Three nights ago I attended a meeting of the Elizabeth Fry Society and the John Howard Society in Ottawa and was pleased to see that there were some 200 or 300 members of the public present, and they showed a great interest in the parole system and in the rehabilitation process in general. If we look at the Parole Service as it is today—and this is a little out of my line—and then look at it as it will be five years from now, I am sure we will see that it will have progressed, just as it has over the last two or three years. It is going forward and improving. I certainly do not think it is at its optimum, but it is headed in a good direction and it is being operated by dedicated personnel.

Senator Buckwold: Do you have any personal suggestions as to how it could be improved?

Commissioner Higgitt: My own personal suggestion, and this is not particularly original, is: more trained staff. It is easy to say that, but it is quite difficult to get staff. We ourselves are asked why we do not have more policemen. Well, first of all, the money for recruiting and training men eventually must come from the public purse, and the question is how much of the public purse is going to

be expended in this particular area. Personally, I would like to see the Parole Service and the police service given the highest possible priority in so far as public expenditures are concerned. I think the key lies in the type of program we have for recruiting skilled and dedicated workers throughout the country.

Senator Thompson: Mr. Commissioner, you spoke with considerable feeling about this colossal problem of heroin addiction, and I think we all recognize just how grim this addiction is. As you look at the rehabilitative approach to this problem, do you feel that we could perhaps have better resources for the handling of it? Can you offer any suggestions from your experience?

Commissioner Higgitt: This is dealing with the narcotics problem?

Senator Thompson: Yes.

Commissioner Higgitt: We are hoping that, when the final report of the LeDain Commission on the Illegal Use of Drugs comes out, there will be some good, solid suggestions therein. My own view is that drug addiction, particularly heroin addiction, if that is what you wish me to speak on, requires specialized treatment as far as parole is concerned. This is the addict himself, as opposed to the person selling the drugs who, as far as I am concerned, is a basic criminal. The addict, however, is in a different situation.

The greatest benefit, as far as I am concerned, is going to come from prevention. Once a person is a heroin addict it may very well be too late in the day for him. The great emphasis ought to be on prevention, and this could be done through an educational program. The Department of National Health and Welfare has gone into this field in a major way. We, as a police force, have for years been preaching the gospel in that regard, but I think it is becoming more difficult for policemen to preach that gospel because we automatically become suspect.

Last week I attended a meeting in Toronto of all the police commissioners of Ontario with responsibility for the municipal police forces. They are seeking our assistance to help them meet the drug problem, and, of course, we are giving them all the possible help we can by way of training their police personnel with respect to drugs. The educational program, however, is beyond what a police force can really do because it must have a professional approach. The Department of National Health and Welfare, as I said, has and is moving in that direction.

In my opinion, the only answer to the drug problem is prevention by educating and encouraging young people not to start on this dangerous trail. I do not know what else can be done. The number of heroin addicts you can return to society to lead a normal life, in my view, is going to be small indeed. I think the opportunity has been lost once they are addicts, and this is why I say prevention must be the basic cure to the problem.

Senator Thompson: We have heard suggestions from laymen to the effect that heroin addicts, because of the tremendous tentacles of addiction, are difficult to rehabilitate, and perhaps should not be allowed into the community too soon because the temptation is so severe. In other words, the suggestions have been that there should

be a long-term approach with respect to rehabilitation of the addict, and the best place for him might be a village in the northern part of Canada.

Commissioner Higgitt: I am quite sure that the LeDain Commission has addressed itself to this type of problem, and that there will be some useful suggestions and programs suggested by that commission. All we can do at the present time is work on a program of prevention and education for those who may be on the path to heroin addiction, and, of course, a program of medical and humane treatment for those who are at present addicts.

I have to be careful in this area because it is an area where there are differences of opinion even among the professional people. I should like to confine my remarks to what the policeman does about it. We see it on the street and it is a discouraging picture.

Senator Thompson: I have the assumption that a drug addict on heroin is a difficult chap to rehabilitate. Do you have any statistics with respect to other categories of offenders?

The Chairman: Could you be more specific, senator?

Senator Thompson: Do you have the success rate, for example, of murderers and other offenders who have been paroled?

Commissioner Higgitt: I do not believe we have broken that down.

The Chairman: We will be getting those figures.

Commissioner Higgitt: I agree with your proposition that a heroin addict is a difficult person to cure—if I may use the word “cure”, and perhaps it is the best word. I suspect that the success rate, from the point of view of a cure, has been and will continue to be about as low as it is possible to be for a category. There may be some medical or professional breakthroughs that will change this. New drugs and treatments are continuously being explored. This does not apply to the so-called soft drugs, and I think that is where the greatest opportunity for community work lies in trying to prevent drug addiction.

Senator Buckwold: Do you feel there is a link between the use of soft drugs and the eventual use of hard drugs?

Commissioner Higgitt: Again, senator, I have to be careful because there are divergent views and opinions on this. My personal view is that there is a connection, and that connection is reasonably direct. I do not mean by that that every cannabis user or marijuana user will eventually become a heroin addict, but I do know that there are more young people now using marijuana than there ever have been, and there are many more heroin addicts now than there ever have been. I think one has to draw conclusions from that, but I believe you can prevent it at the marijuana level.

Senator Buckwold: Are you able to be a little more specific? Perhaps, Mr. Chairman, we are off our subject now.

The Chairman: I will let this go because it has to do with it generally.

Senator Buckwold: I am asking this for a specific reason, because youngsters are always saying to adults, "We use marijuana and there's nothing to it. This is what Professor So-and-So said". We see the statistical evidence of increase in both. From your investigation of heroin users, have you been able to find whether, in fact, most of them have started on the so-called soft drugs such as marijuana?

Commissioner Higgitt: I think the statistics we could produce would show that that is true.

Senator Buckwold: So, in fact, from your statistical evidence there has been an indication, a very real indication, that the use of marijuana would in fact lead to, I agree, a relatively small percentage of the users moving to addiction to much stronger drugs?

Commissioner Higgitt: That is exactly true. The other view, of course, can also be expressed, that there are literally thousands and thousands of marijuana users who have not become heroin addicts, so to say it necessarily leads is a problem. To say that the people who are heroin addicts have generally started in a milder way is true.

Senator Buckwold: Would it be a fair comparison—again, this is perhaps more for public education—to say that statistically if you have a group of 100 people who drink alcohol two of them will become alcoholics?

Commissioner Higgitt: I think this is a fair kind of thing to say.

Senator Buckwold: Would there be the same correlation if you have 100 users of marijuana, because of personality and other pressures and problems, that a percentage would move into the use of heroin and other strong drugs?

Commissioner Higgitt: I would say that is fair; that is true.

The Chairman: Would you say this, then, that the step to marijuana from nothing would be relatively simple; but the step from marijuana to heroin would be easier than the step directly from nothing to heroin?

Commissioner Higgitt: That would be my personal view.

Senator Buckwold: Are there many that really just start on heroin?

Commissioner Higgitt: It is very difficult to get proof on this. There are undoubtedly some, but I think a progression is more likely to have taken place.

The Chairman: Maybe they started with aspirin!

Commissioner Higgitt: Or, indeed, alcohol. Alcohol could be one of the stepping stones. Alcohol is a very serious matter, too, for us.

Senator Fergusson: I am sure the members of the committee will be tired of hearing me hit on one note.

The Chairman: Not a bit.

Senator Fergusson: Do you have women officer to whom women parolees might report? I am well aware that the Parole Board hires different organizations and agencies to act in this regard, but I am sure you are aware, as I am, that there are very few Elizabeth Fry Society people in Canada to deal with women like that. Are women parolees required to report to your officers? Also, do you have any women employees in your organization other than secretaries, typists and that group?

Commissioner Higgitt: Referring first to the question of women parolees, I could not give you the percentage, but I think almost 100 per cent of them would be from urban areas.

Senator Fergusson: We had a list given to us, but I did not check where they came from.

Commissioner Higgitt: I would say that almost certainly 100 per cent would be from urban areas.

Senator Buckwold: Would there not be many Indian female parolees?

Commissioner Higgitt: That is not likely. You see, we are talking about penitentiaries now. I am sure the majority would be in big urban areas, where they do have facilities, and, again, where there are Parole Service people. I am sure I am right in saying that most of this type of parolee would be reporting to a Parole Service person, because they need rather special attention. It is possible they might have to report to one of our officers. We might not have a lady in that area, but it would be done with great care and attention.

The answer to the second question is that we do have women employed in a number of capacities, in addition to stenographers and typists.

Senator Fergusson: Are the jobs they have similar to the positions you have described to us, of how a man starts, gets basic pay, progresses and finally achieves the position you have?

Commissioner Higgitt: At this moment it is not exactly similar, because the requirements are a little different. You see, women officers are mostly used in the large urban areas. We are basically a rural police force, so the requirements are a little different. We have women who are employed full time on the investigative type of duties. Their training is a little different, because it is directed towards rather specialized areas.

Senator Buckwold: They do not learn to ride a horse!

Commissioner Higgitt: No. In dealing with people who are detained for various reasons, we have a number of women who are almost permanently employed, but because in our rural areas we do not have the requirement on a 365-day basis these people are available and work for us as they are required.

Senator Fergusson: It seems to me they are not quite on the same basis as officers of the RCMP.

Commissioner Higgitt: We do not have, as of this moment, policewomen in the sense that you see them in the City of Toronto.

Senator Fergusson: This is what I wanted to know.

Commissioner Higgitt: No, we do not have policewomen as of this moment.

The Chairman: You have special agents.

Commissioner Higgitt: We have women who are specialists in various areas of our work, where we use them and need their particular talents.

Senator Thompson: Have any of them risen to the rank of corporal or above?

Commissioner Higgitt: No. They are hired on a different basis. They are hired on different grades and rates of pay.

Senator Thompson: Is it equivalent to the rank of corporal?

Commissioner Higgitt: The grades are roughly equivalent. Some of them, as a matter of fact, are above that: some are officer equivalent in pay; some are professional women.

Senator Fergusson: But they are just paid that way; they are not given that kind of rank.

Commissioner Higgitt: I will give you one example. We have a number of women who are appearing in court every day giving evidence as specialists in various disciplines. We have men doing the same thing. They are what we call civilian members. We have different grades of members in the force. We have policemen, who we call regular members, and we have civilian members who have all the rights, privileges and duties, and so on, except that they are hired for a specialty; they are paid equivalent basically to the other ranks, and have the same responsibilities.

The Chairman: Do they get to have crimson jackets?

Commissioner Higgitt: No, they do not wear uniform.

Senator Thompson: I do not want to put you on the spot, Commissioner, but do you see the day when a woman could become Commissioner of the RCMP?

Commissioner Higgitt: I do not know whether I will ever see the day, because I am getting old, but I suppose it may very well occur.

Senator Fergusson: That would be a change from the way they do things now.

The Chairman: It would be.

Senator Fergusson: It would have to be a change in the original recognition of women.

The Chairman: I wonder if we could get back to the question of parole.

Senator Buckwold: As a matter of fact, I think women would make more efficient officers than the RCMP—they usually get their man!

Senator Thompson: This question is veering a little from the topic, but in the case of the metropolitan police forces in some cities their salary ranges are higher than those of the RCMP. Are you losing men because of this, to any extent?

Commissioner Higgitt: No. We are certainly not at the top, but we are not far down the salary range. So many forces are making different agreements at different times that it is difficult to say. We have been treated reasonably by the Treasury Board, and I hope this will continue to be the case. Our manpower situation is excellent. There is a limit to the public purse, but we have never had a shortage of recruits.

Senator Thompson: Do you have a pension plan for widows?

The Chairman: What has this to do with parole?

Senator Thompson: It has nothing to do with it, but I am curious as to whether there is or not.

Commissioner Higgitt: Yes, we do indeed have such a provision.

Senator Buckwold: I want it on the record that I am very proud of the RCMP, and I think it is one of our great institutions of Canada.

The Chairman: Could we have that in large black type, please?

Commissioner Higgitt: I look forward to that reputation enduring for many years.

Senator Buckwold: It is wonderful to have the Commissioner of this distinguished force with us today; and on behalf of the committee I appreciate the evidence which Commissioner Higgitt has given, in such a forthright manner.

Commissioner Higgitt: Thank you very much. It has been a great pleasure to be with you.

The Committee adjourned.

APPENDIX "A"

ROYAL CANADIAN MOUNTED POLICE

STATEMENT OF THE ROLE OF THE ROYAL CANADIAN MOUNTED
POLICE IN THE ADMINISTRATION OF THE PAROLE ACT

The jurisdiction and functions of the National Parole Board have already been explained to the Committee; amongst other things, it will be recalled that the Board has a responsibility to ask for investigations to be carried out on persons who will, or are being considered, for parole. Also, the Board must ensure that enforcement action is taken on those who commit breaches of their parole conditions. It is in these two areas that the Royal Canadian Mounted Police principally assists the Board in carrying out its duties. We will look at these separately.

First, however, cases should be noted where the Force assists the Board without a special request. As the major law enforcement agency in all but two of the Provinces, this Force investigates many offences and brings the offender before the courts. The evidence is presented to the Court and where appropriate, a conviction is registered, and a fitting sentence imposed, as prescribed by law.

In the case of a person convicted as a result of an investigation by this Force, and sentenced to a Federal Penitentiary, our detachment provides an automatic report direct to the National Parole Board. This report, compiled by our investigators following the conviction, is designed to give the Board information as to the person himself.

A similar type of automatic report is forwarded by our detachments to the Parole Board in two other situations. Firstly, when the sentence is less than two years, but the aggregate of this and the remnant of a previous sentence is two years or more, and secondly, when a death sentence is commuted to life imprisonment. These reports contain the same information as that already described, gathered by our investigators as a result of interviews of local citizens, police departments, and others.

Next, it will be recalled that the Parole Board has the responsibility under Section 22, Parole Act, to review applications for clemency. That includes consideration of Free Pardon, Ordinary Pardon, Remission of fine, sentence, or forfeiture, and Remission of Estreated Bail. Where such an application has been made, the Board refers the enquiry to the Royal Canadian Mounted Police, with the request that a report be provided to assist the Board in reaching a decision on the application.

The procedure is as follows. The Departmental File is sent to the Royal Canadian Mounted Police Headquarters, where a check of our records is made to determine the convictions of the accused. Thereafter the file is sent to the Detachment where the enquiries are to be made. The investigator will check with local police to determine if any additional information is available for the Board; he will obtain details of the offences committed, and he will interview the applicant, to find out which of the persons the

applicant has listed as references and employers are aware of his record (so that we will not disclose this information unnecessarily, or to those who should not have it, or to the detriment of the applicant). The interview also gives the investigator a chance to observe the attitude of the applicant, see his environment, and the circumstances of his family life. To ensure that the applicant is not embarrassed by our enquiries, we try not to visit him more than once, although it must be left to the investigators's discretion to allow him to revisit the applicant if necessary for the purposes of clarification.

The investigator wears plain clothes for the interviews in these cases. He ascertains the reputation, background, attitude and character of the applicant from the references and employers, being careful not to disclose any information which might be detrimental. In fact, he only advises those interviewed that enquiries are being made on behalf of another Government Department. If this explanation is not satisfactory, the interviewer discretely terminates the interview. Of course, if the person interviewed is aware of the applicant's record, the interview can be carried out in a much more straight-forward and open manner.

There are other avenues of approach for our investigator—he checks with Credit Bureau references, makes neighbourhood enquiries and interviews associates of the applicant. All the information obtained is entered in the report and when the file is returned to the Board, it contains all our investigator's reports, and the Board should have a fairly complete picture of the applicant, his history, outlook, and future capabilities.

Of course, such applications must be dealt with as quickly as possible, so the extent of our enquiries is determined by the information already on file with the Board, by the number and type of offences involved, and how much information can be gained from initial enquiries. We make every effort to complete our enquiries without undue delay, and in any event, within a three-month period, if the file has to pass from one area to another. The Board of course, gets the benefit of our investigator's objective reports as they are attached to the file.

It may be said that our investigator is acting in the manner of a case-worker in such enquiries; access to the applicant's file enables him to get some background knowledge of the applicant, and to avoid any time wasting by duplicating information which is already known. The file as it arrives at our Headquarters from the Board usually contains the Application Form completed by the applicant or his solicitor, giving the reasons why the case is special and qualifies for Pardon, sometimes with documentary proof of the facts attached; it might also contain any previous reports or records relating to the applicant, on hand at the Board; and letters of

reference supplied by the applicant. In the case of an application for a Free Pardon, this is granted only on grounds of innocence, and the applicant must supply new information which must be corroborated by our investigators, for his application to be successfully considered.

Apart from these investigational procedures, the Force is responsible, through policy agreement, to execute all Warrants issued by the Parole Board pursuant to the provisions of the Parole Act. In these cases the Board, either through its Ottawa Head Office or its Regional Representative, deals direct with our field offices where the parolee is last known to be located. In the case of a suspected breach of parole, the Board decides if the circumstances are such that action should be instituted against the parolee. Depending on circumstances, the Board will advise the Force of the action required, and provide appropriate documents for execution, as follows:

- (a) Warrant of Committal upon suspension of Parole
- (b) Warrant of Committal upon revocation of Parole
- (c) Warrant of Committal upon forfeiture of Parole

The first Warrant is a Warrant issued when the Board decides the Parolee has acted in such a manner that his parole should be suspended.

The second Warrant is issued after a parolee has been arrested under the Warrant of Suspension, and the Board has reviewed his case, deciding to revoke his parole.

The third Warrant is issued after a parolee has been convicted of an indictable offence and the Board decides that his parole will be

forfeited. The Parole Act provides for automatic forfeiture of parole in such cases. Most of the warrants described are executed by our members. Occasionally considerable investigation is required before a subject on whom a Warrant is held is located.

In addition, the board may ask this Force's local offices to provide details of offences in which persons are involved while on parole. Under such circumstances we sometimes have to seek the co-operation of other police departments to obtain from them investigational reports for offences they have investigated. Also, should a court conviction be involved, we obtain proof of sentence for transmission to the Board.

Another type of case which we investigate on behalf of the Board, relates to applications for re-instatement of drivers privileges. In this situation we report on:

- (a) The circumstances of the original offence
- (b) Information corroborating the applicant's request for re-instatement and the applicant's reputation as a driver and a citizen.

Again, our investigators carry out the necessary interviews at the local level, and the reports are forwarded direct to the Board for their consideration of the application.

Formerly, one condition of parole was the requirement to report regularly to a local police office. This condition is still imposed on occasion but the responsibilities of the National Parole Board staff for supervision have largely superseded any activities of the police in this regard.

Our members record and report these contacts with parolees, however, all decisions as to any punitive action rests with the Board.

APPENDIX "B"

Statistics covering the years 1967 to 1971 relating to Warrants of Suspension, Revocation and Forfeiture as issued pursuant to the Parole Act, executed by the Royal Canadian Mounted Police on behalf of the National Parole Board:

	Year	Number	Outstanding
WARRANTS OF SUSPENSION	1967	437	
	1968	547	
	1969	643	
	1970	1022	
	1971	<u>1362</u>	<u>98</u>
		4011	98
WARRANTS OF REVOCATION	1967	141	5
	1968	188	7
	1969	202	10
	1970	355	11
	1971	<u>399</u>	<u>24</u>
		1285	57
WARRANTS OF FORFEITURE	1967	175	Nil
	1968	246	Nil
	1969	379	1
	1970	553	4
	1971	<u>851</u>	<u>27</u>
		2204	32

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

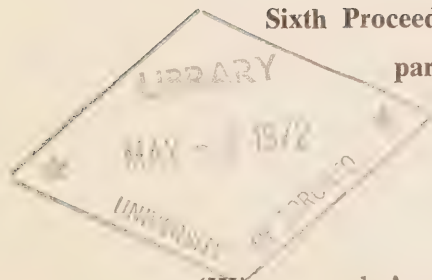
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

No. 4

WEDNESDAY, MARCH 15, 1972

Sixth Proceedings on the examination of the
parole system in Canada



(Witness and Appendix—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue, H.	Hayden, S. A.
Buckwold, S. L.	Lair, K.
Burchill, G. P.	Lang, D.
Choquette, L.	Langlois, L.
Connolly, J. J. (<i>Ottawa West</i>)	Macdonald, J. M.
Croll, D. A.	*Martin, P.
Eudes, R.	McGrand, F. A.
Everett, D. D.	Prowse, J. H.
Fergusson, M. McQ.	Quart, J. D.
*Flynn, J.	Sullivan, J. A.
Fournier, S.	Thompson, A. E.
(<i>de Lanaudière</i>)	Walker, D. J.
Goldenberg, C.	White, G. S.
Gouin, L. M.	Williams, G.
Haig, J. C.	Willis, H. A.
Hastings, E. A.	Yuzyk, P.—30

*Ex officio members: Flynn and Martin.

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by
the Honourable Senator Croll:

That the Standing Senate Committee on Legal and
Constitutional Affairs be authorized to examine and report
upon all aspects of the parole system in Canada;

That the said Committee have power to engage the
services of such counsel, staff and technical advisers as may
be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized
by the Committee may adjourn from place to place inside or
outside Canada for the purpose of carrying out the said
examination; and

That the papers and evidence received and taken on the
subject in the preceding session be referred to the Com-
mittee.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, March 15, 1972.

(6)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:00 a.m.

Present: The Honourable Senators: Proswe (*Chairman*), Buckwold, Burchill, Eudes, Fergusson, Fournier, Haig, Hastings and McGrand (9).

In attendance: Mr. Réal Jubinville, Executive Director; Mr. Patrick Doherty, Special Research Assistant.

The Committee proceeded to the examination of the parole system in Canada.

Mr. K. A. Holt, Assistant Director, Judicial Division, Statistics Canada, was heard by the Committee.

Mr. T. George Street, Chairman of the National Parole Board, while not a witness at the hearing, provided explanation of certain points raised by Committee members and the witness.

On Motion of the Honourable Senator Hastings it was *Resolved* to include in this day's proceedings the Statistics submitted by Mr. Holt. They are printed as the Appendix.

At 11:55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, March 15, 1972.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the chair.

The Chairman: We have with us Mr. K. A. Holt of the Judicial Division, Statistics Canada. Honourable senators have been furnished with a copy of the brief. Would you like Mr. Holt to read his brief or merely to make an opening statement? The brief is short. He may wish to read it, and then expand on it. Perhaps, Mr. Holt, you would read the first three pages.

Mr. K. A. Holt, Assistant Director, Judicial Division, Statistics Canada: Prior to 1968 the parole statistics process in the bureau was very disorganized. That meant that a large number of pieces of paper had to be matched, and that, having been matched, the information had to be processed.

The focus of the processing was really based on decisions rather than on the person involved. That sort of programming restricts the usefulness of the information, because it means that you are producing statistics which are little more than a series of counts.

In 1968 a series of meetings was held with the Parole Service to change the emphasis of the reporting system and to base it primarily on the person involved. It meant that decisions rendered by the board were to be held separately: they were not in any way to be related to the number of persons released on parole or the number of paroles terminated, but were to be dealt with separately.

The plan was to assist research within the Parole Service and to collect information on every individual who had been denied parole. This information was collected on every person released on parole. The purpose of this was to enable a follow-up to be done over the years to measure the usefulness of the parole process, to see whether it might be improved, or to ascertain whether it was functioning efficiently.

When a parole was terminated for any reason, the final material was added to the parole information and processed. In order to do that we worked with people in the Parole Service, who drew up a list of procedures which their staff were to follow, to ensure that each piece of information was forwarded to the bureau.

The idea was that if we made the reporting of statistics part of a person's regular work, rather than something imposed, the completeness and accuracy of the information would be more reliable.

When the program went into effect in 1968, we supplied the Parole Service with four listings. A listing is merely a print-out of all the information in coded form on each document. In doing this type of work, what you are really doing is substituting numbers for words. There is nothing very fancy about it at all. You have the numbers given for various offences and the numbers given for the institutions, and these would indicate the provinces that the institution is in and whether it is a federal or provincial institution.

The purpose of these listings was to provide a means whereby the Parole Service could very quickly obtain information they required and easily get simple counts of information by running down one of these lists. For example, if they wanted to know the number of persons in Ontario released on parole serving a definite or indefinite sentence, they could obtain that information in a matter of an hour, rather than wasting time on a special tabulation. As it turned out, however, no use was being made of these listings and, consequently, the expense could not be justified, so the listings were discontinued. The program started in 1968, apart from a simple counting procedure, was set up to enable the Parole Service to examine the information on a management basis and determine whether parts of their service was extremely efficient and what made it efficient; and, having learned that, to bring the other units up to the same level of efficiency. It would provide the Parole Service with the opportunity to determine the type of person most suitable for parole. I am not referring here to parole prediction, because there is a variation in how people do on parole from province to province. That type of detailed information would require special tabulation sheets being run off.

The monthly listings could provide a method of extracting data with one or two variables, yet we have had only one request for special tabulations since 1968; that request concerned the drug problem, and came from the management data unit of the Solicitor General's department.

One point that should be mentioned here is that there is a tendency on the part of administration people in most of the agencies we deal with across the country to regard statistics with some suspicion. There is an old saying that no one in the world wants good criminal statistics, and I must say no one in the world has good criminal statistics.

Perhaps I could digress for a moment at this point. I worked in the probation service in British Columbia a number of years ago, and I know they make good use of the statistics respecting probation failure, in that they use those statistics to determine exactly what caused the failure, why the failure rate is high in one office as opposed to another office, and to determine what steps should be taken to improve the situation. The statistics could show, for

example, that another probation officer is required or, perhaps, more training, or whatever the remedy might be.

When the management data unit was established in the Solicitor General's department the mandate they received suggested to us that there was going to be a greater use made of the material available. Unfortunately, that has not occurred to this point. I understand there has been some difficulty in getting this establishment operational and, consequently, the potential that is there has not yet been realized. It does, however, provide us with persons who have a good working knowledge of statistics and the use that statistics can be put to in administration. We have worked in recent months, for example, very closely with Mr. Townesend of that unit, and he has, in my opinion, endeavoured to be extremely helpful, but until there is an evolution of the role of this data unit within the Solicitor General's department in relation to the parole and penitentiary services, I do not believe there is going to be any major change in the use of the available material.

Until now we have not published parole statistics, but commencing with 1970 that data will be published. This data is to be published partly because we do process the material, and under the Statistics Act it has to be made available to all people in Canada, and partly because parole does affect people in provincial institutions and under the Constitution provinces have primary responsibility for the administration of justice in Canada.

At the moment we are busily engaged in training people on computer application within our own subject matter division, and plan to computerize the whole program. Once this is done, many of the problems we presently face will be eliminated. We are plagued at the moment with breakdowns in having the data submitted to us, but we will soon be able to send to those concerned a list of material we should have, thus eliminating that problem. It is felt that through our training program and also the fact that the program will be computerized a great deal of information could be made available on short notice.

The present setup, using mechanical equipment or simulated computer program, is slow and not very efficient, but there has been no demand for additional information or demand in the country for the type of detailed information that could be provided. The improved program will also enable us to feed back to the provincial authorities details with respect to persons released from institutions on parole and how they have fared while on parole.

If there are any questions, I should be pleased to try to answer them.

Senator Thompson: Mr. Holt, would I be correct in assuming from reading your report that when a statement is made such as "Crime is committed because of family breakdown in the home or because of poverty in the home," you could not confirm whether that is right or wrong because you are not getting that information, although you have the facilities to get it? Some people suggest, for example, that if you belong to the Boy Scouts you will not get into trouble later on. Is there a study done by your department of the characteristics of people who go to jail?

Mr. Holt: No, senator, there is not. This is the difference between a statistical agency, which we are, and an agency involved in the administration of a program. Our statistics should assist them in determining what the problems are and where they should concentrate their research effort, but the statistics will not provide the answers. All the statistics will do is indicate where they are most likely to find the type of answer they want.

Senator Thompson: As I understand it, there have only been two requests for statistical information from the Parole Service. For example, having been a probation officer in British Columbia a number of years ago, I recall we were asked to collect certain material when we interviewed a person who was before the criminal courts. Have there been any meetings between parole officers and yourself or representatives of your department to work out a formula of questions which might be of interest to both the Parole Service and your department?

Mr. Holt: The last meeting of that nature took place in 1968. Since that time there have been revisions as to the type of coding that has been established, but nothing further than that. One of the problems is that you can ask questions, but unless you know you will get the answers there is not too much point in asking the questions. For instance, one of the items dealt with whether a man had a drinking problem. This was a question on the form. That information is not being submitted to us because of the difficulty those in the Parole Service have in extracting it from their file. One simple solution would be if the form could be filled out in the field office, where the man is making the report and is aware of all the material that has been gathered, either by himself or another service, when he is making his recommendation or report. The problem there, we understand, is that the field services are not able to provide the staff to do this.

Senator Thompson: I am not clear. They are not able to provide the staff to do what?

Mr. Holt: We were told that the field offices did not have enough staff to complete the form, that it would have to come into headquarters to be completed.

Senator Thompson: I do not see how at headquarters they can fill out a form on whether a man has a drinking problem.

Mr. Holt: By reading the file.

Senator Thompson: There seems to be a breakdown, but thank you very much.

Senator Fergusson: Mr. Holt, I wish you would explain a little more about the lost cases that occur, which you refer to on page 3. Surely, when a file is closed you are advised?

Mr. Holt: Not always. The system established, principally by Mr. Carbine of the parole service, was that as the case progressed those handling the file could not pass it on or put it away as a closed case unless the necessary forms had been submitted to the Judicial Division. This system was not followed. In one year we were missing

something like 500 closure forms. Because of the way the information is processed we are not presently able to give them a list of the cases they should have submitted to us. We will be doing this, so that there will be a double check, to make sure that no more cases are lost. This led to a delay in processing the 1970 material, and it was not until towards the end of October, 1971 that we had as many of the files as it was possible to get. If there are some missing, as there might well be, we do not know how many it is, but the number would be small.

Senator Fergusson: You would not even know how to ask for them.

Mr. Holt: No.

Senator Hastings: Mr. Holt, my question relates to the contribution your statistics make or do not make to the actual decision-making process. You said in your preamble that it would indicate those most suitable for parole. From your statistics, I gather that if I am between 20 and 24 years of age and break and enter and receive a two- or three-year sentence, my chances of parole are excellent. In fact, does that really mean anything or contribute to the actual decision-making process that has to take place?

Mr. Holt: No. The numbers themselves are of no assistance there at all. They would only be of assistance if what the numbers indicate is investigated, to find out why so many people who were sentenced for breaking and entering violate their parole, why the figure is so high, why the revocation rate is relatively low compared with the number of forfeitures.

Senator Hastings: That brings me to my next question. You said also in your preamble that one jurisdiction was making good use of the figures made available as a prediction, as to what was happening in certain areas, and that steps were taken. Is that the only instance?

Mr. Holt: I was referring there to the British Columbia probation service. That is the only area I know of in the country that is making good use of statistics in this way. They have adopted a very intensive system of training their staff, and they become very flexible in what they do. The argument is that it costs \$8,000 to keep a man in prison, and it costs, say, \$500 to keep him on probation. You could then draw on part of the balance to meet the special requirements of that individual. This has introduced a wide range of services to the individual, rather than having a set of rules to go on. In examining this they pay close attention to the failure rate, and as soon as this starts to climb they immediately go to the area and give whatever help is required.

Senator Hastings: No other authority is using your statistics in that respect?

Mr. Holt: They are using their own statistics, not ours.

Senator Hastings: No one is using your statistics for the same purpose, that you know of?

Mr. Holt: I am not aware of it, but the administration is an area we are not involved in.

Senator Hastings: A figure that is always bandied about is that of 80 per cent recidivism in our penitentiaries. One can say 75, or 95; take any figure you want. It is a very misleading statistic. Do you have any statistics of the actual recidivism?

Mr. Holt: We have done one very small study on that for penitentiaries in Manitoba. This was done in much more detail on the St. Vincent-de-Paul complex by Dr. Ciale and his group. We are doing a detailed follow-up of everybody released on parole, but it has run into some snags, because we did not foresee that a person could be released on parole and within five years be convicted of 20 separate and distinct indictable offences.

Senator Hastings: After successfully completing parole?

Mr. Holt: Five years after being released on parole. He may have successfully completed, say, six months' parole and then have been convicted 20 times. The way that is scored is that if the man gets a three-month sentence you could not count another conviction until the three months was up. This is rather remarkable, because they were all serious offences. As I say, this really has thrown a road-block into our program, because we were not expecting anything like that. We contemplated two or three, and were willing to go up to five. We are just not ready for that sort of thing.

Senator Thompson: I do not understand that.

The Chairman: How does this happen? Were these hangovers that happened before he was convicted?

Mr. Holt: No.

The Chairman: Or did he just go on a spree?

Mr. Holt: That is right.

The Chairman: And he had committed 20 offences before they caught him?

Mr. Holt: No, these were all separate.

The Chairman: He was caught on each one?

Mr. Holt: He was caught on each one, yes. That is not unusual, to find that a person could technically be cast as an habitual criminal, without the subjective aspect of it, within, say, one year, get one month for breaking and entering, three months for breaking and entering and then three months for breaking and entering, all within, as I recall, one year, one 19-year old boy did.

Senator Thompson: I do not see where that throws your study of parole out. Are you suggesting that there is a large number of these cases and that that just throws your parole study out?

Mr. Holt: It is the follow-up on it.

Senator Thompson: How many parolees have you studied?

Mr. Holt: Each one.

Senator Thompson: How many is that, roughly?

Senator Hastings: It would be 5,000 a year?

Mr. Holt: Yes.

Senator Thompson: How many of these get 20 indictable offences?

Mr. Holt: Very few. This is the extreme example. A considerable number get three, four and five.

Senator Thompson: You are a statistician. You say there is "a considerable number". What proportion is that?

Mr. Holt: I could not tell you without looking at the figures.

Senator Thompson: That is rather serious, from the point of view of terms of parole. When you say 80 per cent, you are suggesting that you cannot study it, because there are these 20 indictable offences. Could you clarify that for me?

Mr. Holt: The question on recidivism was based on penitentiaries, principally, as I understood your question.

Senator Thompson: I am sorry. I think the question asked was a question on parole, have you done a study of the success of parole, and you say you cannot do it because—

The Chairman: He was asked a question by Senator Hastings and that was: Do you have any actual figures about the rate of recidivism? That was your question, was it not?

Senator Hastings: Yes, my second question.

The Chairman: And the answer was "No".

Mr. Holt: The answer was "No".

Senator Hastings: Therefore, on the point of parole, you have no—

Mr. Holt: We are basing the failure rate, or recidivist rate, not on decisions at all.

The Chairman: Can you explain that?

Senator Hastings: If I am on parole and I get a "three-months reserve" decision, and it comes up later and it is reserved; I get four reserve decisions in a year. How would that show up? You have no control?

Mr. Holt: No.

Senator Hastings: That is, four decisions that mean nothing—mere statistics.

Mr. Holt: These are processed as decisions, and on the basis of what is processed as decisions it is quite possible to extract that type of information. Yes, it is quite possible to determine how many decisions are made on each individual over any period of time.

Senator Thompson: I understand decisions, but I am still not clear. You are saying that based on a five-year period, a study of the success of parole is impossible for you to make?

Mr. Holt: I am not saying it is impossible. What I am saying is that the figures that we did produce on this we have found are inaccurate, because we have found that we are counting the same person two or three times in those figures. We would have to separate these out. What it comes out to, after five years, is that about 40 per cent of the people who are released on parole have been reconvicted for an indictable offence. That is roughly the figure.

The Chairman: Roughly, the figure is 40 per cent?

Mr. Holt: Yes, 40 per cent have been reconvicted of an indictable offence after having been released on parole.

Senator Hastings: That runs very close to 43 per cent who serve their full sentence and they are recommitted. According to the best survey I have seen made on recidivism, it is about 43 per cent that come back.

Mr. Holt: Come back to where, sir?

Senator Hastings: To penitentiaries.

Mr. Holt: But whether a man comes back to penitentiary may depend merely on the way that the sentencing magistrate looks at it. He may get a fine after having been in the penitentiary, or he could get one month in jail. We have made a study to try to determine whether the magistrates or the courts utilize the man's previous criminal record in passing sentence; and the indication is that this really does not make any difference to the type of sentence the man gets.

The Chairman: This is what your figures reveal?

Mr. Holt: Yes. If you separate the cases out to habitual, possibly habitual or not, and then look at what they have got or could have got, there is no difference.

Senator Hastings: The figure I am referring to is 43 per cent, which is the best study I have seen made—it was made in the United States—on actual recidivism. They followed so many men through life, and it is strange that it comes out very close to your 40 per cent.

Mr. Holt: This is what you would have to do. Again, at this point in time, we are no longer processing material on the penitentiaries at all. We have stopped that program. It is going to be carried by the Penitentiary Service themselves. Here you get into an oddity, where the penitentiary people refer to "an inmate" and the Parole Service, in the same department, refer to this man as a "parolee," and the records are not merged. This makes it difficult.

Senator Hastings: It seems that it does not matter whether your parolee has served the whole sentence or not, you are going to get back 6 out of 10. Is that a logical conclusion?

Mr. Holt: I would be suspicious of the figure in the United States, where it is only 43 per cent.

Senator Hastings: It is the only one I have. That is why I ask you if you have ever done one. This is the only one I have been able to find that has been accurately done, and I asked you if you had done one, and you said that it has not been done in Canada.

Mr. Holt: No.

Senator Hastings: This is accepted as a logical recidivist rate?

Mr. Holt: There is extraordinarily little research done in Canada in this area.

The Chairman: Do you get requests from university professors for this type of thing?

Mr. Holt: Yes.

The Chairman: Do you get many of them?

Mr. Holt: Yes.

Senator Buckwold: It may be this question has been answered and I have not got the answer properly, as one can get lost very easily in these statistics. Mr. Holt, you have said that, according to your statistics, 40 per cent of parolees have been and, I presume, will be reconvicted on an indictable offence after they have been released on parole?

Mr. Holt: Yes.

Senator Buckwold: That is some time after their parole is finished?

Mr. Holt: Yes.

Senator Buckwold: What is the similar figure for those who have been denied parole and have finished their sentence?

Mr. Holt: We have never looked at this. The facility was built in to look at this, but there was never anything done. This should possibly be explained by distinguishing the roles between the two agencies. We can provide the statistics, but we do relatively little in

the way of research on them at this point in time. We have not done it. It could be done, but it has not been done.

The Chairman: In other words, your statistics are set up to answer questions that you are asked, rather than just set up as statistics in expectation of something that might be asked?

Mr. Holt: That is partly correct.

Senator Buckwold: May I ask one or two questions on the statistics that we have in front of us?

Senator Hastings: Mr. Chairman, could I move that the statistics be included in the record?

The Chairman: Yes, I would be happy to have that motion. Is it agreed?

Hon. Senators: Agreed.

See Appendix.

The Chairman: Perhaps the best thing to do would be to take these documents separately. Attached to your brief, Mr. Holt, you have a number of documents. One is a pink one which says "Decision". The second one is "Parole Termination" another is "Management Data Centre". I wonder if we might start off by asking you what this first sheet is used for?

Mr. Holt: At the present time, in the parole program, we classify the decisions by the type of decision, the person involved, and where he was. There are 82 different types of decisions used by the Parole Board. These are recorded on these pink slips, and we get one copy of this for each decision made. If the decision is, say, to reserve parole, we just get one copy. If the decision was to grant parole, we insist on obtaining a copy of the parole certificate, which is the one marked "specimen," and the long history form of information on the individual, along with the decision sheet.

Senator Haig: Mr. Chairman, there is nothing on the reverse side of the sheet marked "specimen," and yet on the front of it are the words, "I fully understand and accept all the conditions (including the conditions printed overleaf), regulations", et cetera. What are those conditions that are supposed to be printed overleaf, and why have you not given the reverse side of the page to us as well?

Mr. Holt: That is an oversight, senator. The general conditions that are placed on there are: to be of good behaviour; to report as required; possibly to report to the local police chief, and so on. There may be special conditions assigned, such as: abstain from alcohol; stop gambling; dissociate yourself from certain individuals; and so on.

Senator Haig: Does the parolee receive a copy of this document?

Mr. Holt: Yes. He signs it and keeps one copy. We get one copy and the Parole Board gets one.

Senator Haig: That seems to be an awful lot of paper work.

Mr. Holt: It is the only way in which we know that the man has actually been released. You see, there are a number of persons who, having been granted parole, refuse to accept the parole, and if you are trying to keep track of the individual and whether he actually went on parole or not, then you cannot base it just on the decision to release him; you must base it on the actual release.

This information also shows us where the parolee is going, It shows us his designation and who will be supervising him.

The Chairman: Will you let us have a copy of the information that is contained on the back of that document, please?

Mr. Holt: Yes. I am sorry for the omission.

The Chairman: We will get that and add it to the record.

Senator Thompson: Do you say that there are 82 decisions?

Mr. Holt: That is correct.

The Chairman: On the management data centre sheet there is a series of figures or columns. What are those for?

Mr. Holt: You are referring to the small figures on a management data centre input sheet. Those columns are merely for coding. There are eight digits allowed for the fingerprint number, for instance. This merely indicates on a punch card which columns are involved in collecting that information.

The Chairman: So it is columns on a punch card that this goes to.

Mr. Holt: That is right. For instance, if column 52 had a 1 in it, then you would know that the man had been convicted as an habitual criminal. If it had a 2 in it, then you would know that he had not been. These columns would tell you if he was a drug user or a dangerous sexual offender or a parole violator, and so on.

Senator Thompson: Are the 82 decisions the result of some research requirement? Eighty-two seems to be an enormous number of decisions to have classified. I gather these are decisions in respect of the type of parole.

Mr. Holt: That is right.

Senator Thompson: And there are 83 types of decisions?

Mr. Holt: That is right.

Senator Thompson: Is it because of research requirements that we have this broken down into 83 decisions?

Mr. Holt: This breakdown was requested by the Parole Service. These are the types of decisions they make, and they wanted them recorded.

Senator Thompson: Is there a special form for each of the 83 decisions?

Mr. Holt: No. Over the years a single decision form has been used. Now, there are two forms—these pink slips—representing two categories: major decisions and management-type decisions. That would explain the two pink sheets instead of a single sheet.

Senator Thompson: But there is not one form for each type of decision?

Mr. Holt: No. That is correct. There are simply two separate forms on which all these decisions are recorded.

Senator Buckwold: Mr. Chairman, just looking at Table 1 (a), I gather that represents a group of statistics of all persons, including federal and provincial institutions, who have been denied parole or who have been released on parole and then had their parole terminated either by expiry, revocation or forfeiture.

Mr. Holt: That is correct, and it does include both federal and provincial institutions. I must point out here that one thing you must be careful of is that a person whose parole is terminated could very well have been released on parole the year before. You cannot merely take the number of releases, therefore, and compare that directly to the terminations.

Senator Buckwold: I realize that, but I presumed that over a period of time it would level out or average out.

Mr. Holt: If I may interject there, I would say that that might be so, if you were dealing with persons, but what you will find is that roughly one person in every five released on parole last year had been on parole previously.

Senator Buckwold: Yes, but that is a carry-forward, too. It may be quite true that the people who were released on parole are not necessarily the people whose parole was terminated, but there might be some. So you would almost have to say that that will average out, and on that basis—eliminating the expiries and just looking at the forfeitures and revocations—granting they are not exactly the same people, 23 per cent of releases in the overall system would be considered failures of the parole system.

Mr. Holt: Right.

The Chairman: Where did you get that percentage figure?

Senator Buckwold: By adding 854 forfeitures to 374 revocations and getting a total of 1,228 persons and relating that as a percentage of 5,193 releases, you arrive at a figure of 23 per cent. Again, I must emphasize that the difficulty with these particular statistics is that they are not exactly the same people, but we would have to interpret them as being probably an average, because it would happen again the next year when the same people came up again.

Now, I should like to look at the federal picture on Table 1 (b).

Mr. Holt: I must tell you here that that is only the federal picture. The 100 per cent on which these percentages are worked is related only to the federal prisoners. It is 100 per cent of the federal prisoners, not of the Canada total.

Senator Haig: What is "Her Majesty's Penitentiary"?

Mr. Holt: That is the jail in St. John's Newfoundland. That is the name of the jail. That was its name prior to Confederation.

Senator Haig: Why not just put "Newfoundland"?

The Chairman: Because it is still called "Her Majesty's Penitentiary."

Mr. Holt: That is correct.

Senator Buckwold: At any rate, that again would be a very small total in the whole picture. We are looking at the general trends. Now, again I use the same means to arrive at a percentage, Mr. Chairman. I believe that is what the public and we are looking for. The statistics seem to be higher than I would have expected, but on that basis there were 584 forfeitures and 258 revocations, making a total of 842 terminations, excluding expiries. The total released on parole was 2,719. Again, taking the percentage, it comes to about 32 per cent, which is almost one-third. That means that almost one-third of the people who are granted parole have it terminated because of forfeiture. Am I interpreting this correctly?

Mr. Holt: That is correct.

Senator Buckwold: Mr. Chairman, may I ask you a question? Is this the same as the figure given to us by the people from the Parole Board?

The Chairman: It is pretty close to it.

Senator Hastings: Am I right in my reading of this table in thinking that 35.4 per cent were released from federal penitentiaries in the western region? The total seems to be 961 for 35.4 per cent. In the Province of Quebec it was 767 for 28.2 per cent.

Mr. Holt: Yes, that is correct.

Senator Hastings: Perhaps it is not a fair comment, but I wonder why western Canada is always higher. It seems to bear out an assumption that I have been making.

Mr. Holt: The crime rate in British Columbia is the highest in Canada, and always has been.

Senator Hastings: They seem to have more paroles anyway.

Mr. Holt: Well, they have more customers.

Senator Hastings: Of course, the western region has 30 per cent of the population of Canada, there is a further 30 per cent in

Ontario, a further 30 per cent in Quebec and 10 per cent for the remainder of the country.

Mr. Holt: Well, there are two special factors on the prairies; one is the Indian population and then you have British Columbia with the lower mainland which, because of the climate, is not affected by adverse weather such as we experience in the rest of the country. In the rest of the country the crime rate decreases in bad weather, but in British Columbia it holds relatively steady at just over 8 per cent for any one particular month. In other parts of Canada this could drop down to as low as 4.9 per cent of the crime reported for the entire year.

Senator Buckwold: It would seem to indicate that there are some advantages in living in a colder climate.

Senator Hastings: Are you saying that my chances for parole are better if I am released in the lower mainland, where the weather is better?

Mr. Holt: No, I am not saying that.

The Chairman: He said, in fact, that your chances of getting into trouble are better in that region because there you can go for 12 months instead of just six.

Mr. Holt: British Columbia leads in illegitimate births, divorces, abortions and crime.

Senator Hastings: Are you from British Columbia?

Mr. Holt: Yes, but it did not decrease when I left!

Senator Fergusson: Mr. Chairman, are there statistics to bear out what Mr. Holt has said about a greater incidence of crime in milder climates?

Mr. Holt: Yes. You can actually take the figures from the RCMP detachments in the prairies, and over the course of several months you can see the crime rate decrease as the cold weather comes in.

Senator Hastings: Well is it related to the general economic conditions of the area? Is it a question of the weather or whether there is greater construction activity, for example?

Mr. Holt: I think the argument of Chief Fisk in Vancouver is probably correct, that convicts and crooks are just as lazy as the rest of us and in bad weather would prefer to sit home and watch television.

Senator Hastings: When you say they were denied their release, does that cover day parole?

Mr. Holt: It does not cover day parole. We do not cover day parole in the statistics processed by Statistics Canada.

Senator Hastings: Why not?

Mr. Holt: Partly because of the amount of work involved and the amount of resources we have available to do it. This is an area which has expanded tremendously, and we just do not have the bodies or the money to do it.

Senator Hastings: It seems to me that this is a very important area that we are moving into, the area of day parole, as a rehabilitative feature, and we should know how we are doing it.

Mr. Holt: I agree.

Senator Hastings: Do you have plans to do it, or is the situation static?

Mr. Holt: There is the matter of the division of work as between Statistics Canada and the agencies it deals with. Whether you could call day parole a type of statistic for management purposes rather than for general knowledge purposes, which would be of interest to a far wider range of people, I do not know. Furthermore I do not know whether it has been resolved between the two departments. There is an area where in working with the federal agencies as opposed to, say, a provincial agency, this role of management responsibility for much more data comes in, and at this point it has not really been defined whether day parole should be considered as exclusively a management responsibility or not. If you were to assume that a person under sentence goes under the Penitentiary Service, for statistical purposes it does not matter where he is. Whether he goes in in Dorchester and comes out at William Head, he is somewhere in the service, and that type of move could be looked upon in just the same manner as if he were moved from one cell to another within an institution. Day parole is very much the same sort of thing. The man is strictly under the authority of the Penitentiary Service, and whether they choose to let him out for a day to go looking for a job, for example, is a matter for them.

Senator Hastings: I am dealing with day parole granted by the Parole Board, and not just temporary absence.

Senator McGrand: It is evident that parolees have problems living up to the terms of their parole to stay away from former associates. How important is the use of drugs while on parole? You mentioned that crime was something of a good-weather activity. Does this also apply to drug traffic?

The Chairman: This may be out of your field. Do you have any figures on that?

Mr. Holt: The only information we have on this matter is in table 1(e), which indicates at the bottom "Drug User".

Senator Haig: What do the letters "N/S" mean?

Mr. Holt: They mean "not stated." This is a problem of recording, and it perhaps illustrates this fact. The Penitentiary Service made a detailed breakdown of whether a man was an addict or a user. It would be very difficult to place a person in one category or the other. Those who are in the category "not stated" would almost

invariably come from a penitentiary where the classification staff were not willing to make an arbitrary decision one way or the other, so they have placed them in the category "not stated".

The Chairman: So where you have used the term "drug user", this includes everyone using drugs?

Mr. Holt: Yes.

The Chairman: Everyone who uses drugs, that you are aware of?

Mr. Holt: Yes. We use this catch-all phrase to include everything. At that point you would have to break down all of the information on drug users and determine who was a pusher and who was not. This would require additional research.

Senator Buckwold: When you look at the statistics, these include only those who have applied for parole: However, this is not the total number of drug users in the institution, is it?

The Chairman: Just a moment. Does this include the number of prisoners denied, released or terminated? I understand that in some instances, consideration will be given and a ruling made as to whether one applies for parole or not. Is that correct?

Mr. Holt: By law, some cases have to be reviewed.

The Chairman: And a decision given?

Mr. Holt: Yes.

The Chairman: That would be in the case of habitual criminals and dangerous criminals?

Mr. Holt: Yes, and I believe under the changes in the act, and Mr. Street could tell you more about this, I think it is every five years—

Senator Hastings: It is every four years.

Mr. T. G. Street, Q.C., Chairman, National Parole Board: I think it is every two years. What are you referring to specifically?

Mr. Holt: If a man is serving a ten-year sentence for break and enter is there an automatic review of his case?

Mr. Street: He is reviewed at one-third of the period of his sentence, and if he is denied, then it is every two years.

Senator Burchill: Is this the case even if he does not apply?

Mr. Street: Yes. However, now he can waive his right of consideration for parole.

The Chairman: If he waives that right, you do not have to go through all the motions of considering the application.

Mr. Street: Yes, that is correct.

Senator Hastings: However, if you are serving a 20-year sentence, does the automatic review not happen at four years?

Mr. Street: Yes.

The Chairman: It would be four years or one-third of his sentence, whichever is less.

Mr. Street: Yes.

Senator Buckwold: Before I was cut off I was endeavouring to say that it would not appear that the number of drug users applying for or being granted parole is a significant problem.

The Chairman: Out of the total number of 5,193, 222 of them were illustrated as being users, and out of that figure of 222, 142 of them were terminated during that period.

Mr. Holt: That is correct.

The Chairman: And of those terminated, 73 were by expiry, 24 by revocation and 39 by forfeiture?

Senator Buckwold: It is around 30 per cent.

The Chairman: It would seem to run fairly close to the overall picture.

Senator Buckwold: This may not be included in the statistics, but perhaps you or Mr. Street can answer this question. We hear that many criminals are involved with drugs and that many people within our institutions are involved with drugs. These statistics would seem to indicate otherwise. As the chairman has indicated, out of that figure of 5,193, 4,931 are non-drug users who were released. Is this close to the percentage of drug users to non-drug users within the institutions?

The Chairman: This is for federal penitentiaries.

Senator Buckwold: In other words, you have not worked out that percentage. I think it would be around 5 per cent. Do you have the percentage of those within institutions who are known drug users?

Mr. Holt: This changes so rapidly. Two or three years ago there were around 3,500 known or registered heroin addicts in Canada. The RCMP estimate that today there are 16,000 heroin addicts. Contrary to popular belief, people do progress from soft drugs to hard drugs. This is not by habit, but by salesmanship. It is more profitable for a pusher to sell you hard drugs because he has you hooked for life.

Senator Hastings: Are you saying that all people progress?

Mr. Holt: No, the old argument was that you did not progress from soft drugs to hard drugs.

Senator Hastings: What are you saying now?

Mr. Holt: Contrary to that belief, there has been a large number who have progressed.

The Chairman: Out of that figure of 16,000, do you have figures which would indicate how many began by using marijuana?

Mr. Holt: The RCMP would have that figure, or the narcotics control division of the Department of National Health and Welfare.

The Chairman: Are these estimated figures or actually accumulated figures that we are speaking about now?

Mr. Holt: This is a very close estimate.

The Chairman: They are not figures which come from your department?

Mr. Holt: No.

The Chairman: Let us confine ourselves to your department.

Senator Hastings: With respect to revocations and forfeitures, when do you receive those decisions?

Mr. Holt: I should explain that if you look at revocation as a failure per se, this is not accurate. The parole officer may be dealing with a person who is heading into serious trouble; he is mixing with his old gang again and is not obeying the conditions of his parole. The parole officer could suspend his parole for a short period of time, or he may decide that the only way to bring this man to his senses is to ask for a revocation of his parole in an effort to jolt him. It may very well be that the overall plan is to keep this person in custody for three or four months and then release him again. When you are dealing with the failure rate, unless you are following an individual case this rate could be very much distorted.

Senator Hastings: Where do the figures 854 and 374, totalling 1,228 come from?

Mr. Holt: They come from the decision sheets or the decision notifications. It indicates that, let us say, "Bill Smith's" parole was revoked on such-and-such a date, and this would include a decision number.

Senator Hastings: And "Bill Smith" could be at large or in custody?

Mr. Holt: That is correct.

The Chairman: This information is misleading, then, because unless you know why the decision was made you cannot really interpret the significance of the decision?

Mr. Holt: No.

The Chairman: However, the forfeitures would be clear cases of men who had reverted to active crime?

Mr. Holt: They have been convicted, yes.

Senator Thompson: Would you define what you mean by "failure rate"?

Mr. Holt: We do not arrive at a failure rate, It depends on the individual case and not on the decision which has been made. So it could mean that a person failed while he was on parole, or one year after his parole ended, or five years later, We are making a study of five-year follow-ups. This is based on the Pardon Act which states that a man convicted of an indictable offence can apply for pardon as late as five years after the event. We can, however, show that there are revocations and forfeitures. This does not really constitute a failure rate until an investigation of the individuals involved establishes how many of them fail. That is the only manner in which to determine the actual failure rate, because it can be distorted by planned revocation of parole, which is a deliberate step carried out to assist the inmate to rehabilitate himself. A revocation need not be strictly punitive, but could have a remedial aspect. The inmate is warned that his parole will be revoked until he changes his attitude, during which time he will remain incarcerated. This may be used simply as a measure of parole.

Senator Thompson: My point is that earlier you presented a statistical proportion of parolees, which indicated that this is the failure rate, Would that failure rate not mean that a man might simply have disappeared without committing another crime? It could be quite misleading.

The Chairman: Let us take an even more complicated case. Suppose a person has been sentenced to 10 years for armed robbery, is paroled and then convicted, for example, of rape, which would pretty surely put him back into a penitentiary. This would show him as a forfeiture. Do you consider this case as a failure when the man is returned for a completely unrelated type of crime? Unless "failure rate" is defined before you present the figures, we are wasting our time.

Senator Thompson: Would you please define "failure rate"?

Mr. Holt: We have never defined it, really because of these difficulties. Unless a great deal of thought and effort is applied and all aspects considered, "failure rate" cannot be defined. I mentioned at the outset that the tendency to use figures to establish a failure rate has been over-emphasized. I think this is true in the figures with respect to parole.

This could have been done for a very good reason, to quote a failure rate of, for instance, 10 per cent, because at that point there was a very big selling job to be done to get parole accepted, I think it is accepted now, and we have seen in the press the comments of the Commissioner of the RCMP. Comments have been made by other police chiefs supporting the concept of parole.

However, I do not believe the emphasis should be on so-called failure, but on success. We must consider the number who go out, how long they stay out and such statistics. In my opinion, there has been a tendency to be extremely negative and consider the failure

rate to be very difficult to determine. If it were accepted as a condition of failure that another indictable offence is committed, whether of the same type or a different offence, we would be on fairly safe ground. I would really be hesitant even to attempt to define "failure rate". It is an artificial computation and is not realistic.

Senator Thompson: Would you give a definition of "success rate"?

Mr. Holt: That is those cases in which there is no return to crime.

The Chairman: Or no detection.

Senator Thompson: I am becoming confused because, as I and perhaps a number of the public, understand it, it is felt that the success rate with respect to parole is fairly high. Do you agree with that?

Mr. Holt: Yes, I do.

Senator Thompson: From your studies?

Mr. Holt: Yes.

The Chairman: We can agree on "success rate", and perhaps that is the one we should use.

Mr. Holt: That is correct. I do think the emphasis should be on success.

Senator Thompson: What number of staff do you have in the Judicial Division of Statistics Canada?

Mr. Holt: We have 49 staff members. They are involved in statistics respecting all adult and juvenile courts, a special study on murder, obtaining reports on crime from approximately 1,800 police departments, crime statistics and parole statistics.

Senator Thompson: Had the parole officers made a request to obtain research data throughout Canada, would you have been able to respond to that request?

Mr. Holt: No, we may not have.

Senator Thompson: In fairness to parole officers, do you think that they might have been aware of this and for that reason did not submit requests?

Mr. Holt: That is quite true. If they had known that and refrained from asking for the information, it would have been self-defeating, because the level of use of data tends to determine the amount of resources supplied to meet those requests.

Senator Thompson: Do I understand you are not collecting data for penitentiary mandatory supervision, day parole and temporary

absence? In that case it seems to me that the Judicial Division's operation is rather limited. Would you agree that that is accurate?

Mr. Holt: I would say, yes, it is limited. Possibly one factor which might be limiting is the division between the management and statistical requirements. There is a difference.

The Chairman: That is not clear to me.

Senator Thompson: Would you clarify that, sir?

Mr. Holt: I will attempt to do so by quoting a Treasury Board directive. They are the people to whom we listen. They have set out very broad guidelines with respect to statistics and statistics for management purposes. There is an old directive which states that any federal government agency undertaking a survey involving more than 20 respondents must clear this with the Chief Statistician of Canada, except in cases for management purposes.

The Chairman: What does "management purposes" mean?

Mr. Holt: That is a very good question. It has really not been defined. It involves many arrangements and agreements between ourselves and the agencies involved as to who can best carry out the work. At the present time within the Department of the Solicitor General the research capability for the national Parole Service is limited. They have one lady on staff with a clerical assistant. At the same time they have established a management data centre which has the responsibility to develop full use of all sources of management data. Normally we would work fully with them, but at this point of time they have neither the staff nor the facilities to carry on their work. Really you are caught in between. At the bureau we are not processing this material the way it should be. That is a fault of our own. It should be based entirely on the individual and each individual followed up automatically; but this should have been done three or four years ago, not just now.

Senator Thompson: Did you have a report or review made on statistical operations of the bureau and the National Parole Service?

Mr. Holt: No, we did not. My only involvement in that was a check made to confirm the amount of correspondence between the two bodies.

Senator Thompson: I thought that in your report you mentioned something about a management consultant.

The Chairman: That was the Solicitor General's Department.

Senator Thompson: No outside group has studied the operation of your organization?

Mr. Holt: No.

The Chairman: Management figures would be the total number of people. If I were head of the Penitentiary Service I would need to know how many people I had in my penitentiaries in order to

estimate how much money I would require to supply food for the following year.

Mr. Holt: It is much more detailed than that.

The Chairman: Perhaps you could give us examples.

Mr. Holt: It might help if we look at one of the tables.

The Chairman: What would 1(e) be for? Would that be a management figure?

Senator Thompson: Mr. Holt, while you are looking at the tables, may I say that in the report there is mention of a full review of statistical operations having been made. I request that we be supplied with a copy of that review. On page 3 it states that a Mr. Townesend was at that time undertaking a full review of the statistical operation. I should like to request that the committee receive a copy of that.

Mr. Holt: I do not have that.

The Chairman: Who has that?

Mr. Holt: It would be within the Parole Service.

Senator Thompson: May I request that we obtain that report, if at all possible?

The Chairman: Did you say it is mentioned on page 3?

Senator Thompson: Yes, on page 3, at the end of the middle paragraph. It mentions that in 1970 a Mr. Townesend was undertaking a full review of the statistical operation.

The Chairman: He is with the Solicitor General's Department. I will take that as a direction, and will see what I can do about obtaining it.

Senator Hastings: You mentioned a special study on murders. Is that public information?

Mr. Holt: There is a publication on this each year. We are presently preparing a 10-year summary of murder in Canada and are doing a whole series of studies on it. It should be available before the end of the summer.

Senator Hastings: This is on parole?

Mr. Holt: No, it is on murder, not on parole. It deals with what has happened to a person following his original sentencing.

Senator Hastings: And where that person is now?

Mr. Holt: Yes.

Senator Buckwold: An interesting set of statistics is the one just handed to us. It includes the number of persons who terminated

their parole by their time on parole. Perhaps we can learn something from this. During the first eight months of time on parole, 70 per cent of revocations take place and 62 per cent of forfeitures. In other words, the first few months appear to be the crucial period in the Parole Service.

Mr. Holt: That is so. I should also mention releases from the penitentiary by expiry. The first six months are the critical months.

Senator Buckwold: A rough time is also experienced, apparently, during the 13-to 17-month period. It would appear that two-thirds of our problem is created in the first eight months. These figures may not affect your bureau. Perhaps they affect Mr. Street's board. Can we learn anything from this? Is this what we should be concentrating on in our effort to help these people?

Mr. Holt: I mentioned a very small study that had been made on released persons from Manitoba. That study came up with the curious fact that those released, either by expiry or on parole, in the dead of winter, had a higher success rate than those released at the time of maximum employment. This suggested that possibly, by way of experiment, institutions might consider paying a man a wage and deducting unemployment insurance, so that when a man was released there would be a period of three or four months in which to carry him. This might decrease the six-month critical period after a man is released. You can build a person up for parole; you can talk him into parole; you can get him on to the street; you can get him a job; and everything seems to be going well; then tedium and panic set in. This is an area which has to be researched a great deal. This is the critical period. I do not know of any studies which have been done on why this should be so.

Senator Buckwold: I find these statistics very interesting. I do not know what society can do to help people over that critical period. Perhaps there could be a guaranteed wage for a period of time.

The Chairman: If a man can get over the first 12 months, there is a fair chance that he will make it. If he can get over the first two years, he is almost home free.

Mr. Holt: I was asked by the chairman about management use of material. May I refer you to table 2(c) under "revocation". It would be of interest to know why Ontario and British Columbia have such very high rates compared with the other provinces. Ontario has 27.8 per cent and British Columbia 22.2 per cent.

The Chairman: That is not the revocation rate as related to the number they turned out, though, is it? That is of the total number of revocations.

Mr. Holt: They are both high. If you compare Ontario with Quebec you will find they are almost identical, except in one area, yet the revocation rates are 13.1 per cent for Quebec and 27.8 per cent for Ontario.

Mr. Street: Mr. Chairman, may I suggest that the possible reason for that is that Ontario and British Columbia both have highly

developed systems of probation. As you and Senator Thompson well know, they use probation to a much greater degree than do the other provinces, and therefore, anyone who ends up a prisoner in Ontario is going to be a tougher risk than someone in another province who might have been put on probation as opposed to receiving a prison term. In other words, we are dealing with tougher cases in Ontario and British Columbia, as compared to other provinces.

The Chairman: And revocation would depend entirely on supervision, would it not?

Mr. Holt: Yes.

Mr. Street: If you had tight supervision you might find more violations than if you did not have tight supervision.

We have noticed over the years, Mr. Holt, that if you have a person in prison in Ontario he has usually been on probation at least once or twice. Do you agree with that?

Mr. Holt: I would agree that is right, but it only takes us part way. Having revoked parole, do you have a higher success rate?

The Chairman: This is given as an example of management—is that it?

Mr. Holt: Yes. If the provinces of British Columbia and Ontario have tougher men on parole and revoke that parole, is it successful or not?

Senator Thompson: I think it is a good example of the research needed.

The Chairman: If you take the figures relating to forfeiture you will note that the Province of Quebec stands at 22 per cent and the Province of Ontario at 25.8 per cent. In that respect they are fairly close. This would be in line with what Mr. Street has said. In other words, we are now getting back to the point where the forfeiture is for a detected crime. They are in the same ball park in that area.

Senator Thompson: Mr. Chairman, this raises a good many questions for research. As I understand it, the statistics are obtainable, but unless someone is going to research them, I put it to you that the material will lie ineffective.

The Chairman: We are getting a little off the track. We started to deal with the question of how this data would be of importance to management. What would make this an example of management data?

Mr. Holt: What is the effectiveness of revocation? Does it matter that a parolee has violated one, two, or three of the minor conditions of his parole? Is that important? If you look at the revocation rate where alcohol is the factor, you will see it stands at 37.2 per cent. In other words, in those cases abstention from alcohol was one of the conditions of the parole. This could mean that these people are all alcoholic "cheque artists" who are going to

continue along that line but, from a management point of view, we would possibly want to look into this. In other words, simply because a man gets drunk once, should his parole be revoked? Is this type of thing happening? Is there a need to have our parole officers make better use of the resources to deal with alcoholics or problem drinkers such as the de-toxication centres that are being set up in many of the provinces at the present time? I do not know what the answers are, but looking at a figure such as this, I would immediately ask myself, "Why is the figure so high? Does the occasional drink really matter, or is there a really valid reason why this is so?" At this point we can only guess.

Senator Thompson: I think this ties in with what we are speaking about, Mr. Chairman: In Table 2(b) it is shown that the John Howard Society handles 16 per cent of the cases and has a revocation rate of 22.5 per cent, and the "(public) provincial" agencies handle 17.2 per cent of the cases with a revocation rate of 12.3 per cent of the cases. That raises a question with respect to the ministerial policy in that regard. In other words, the minister's policy is that 50 per cent of private agencies are used and yet they seem to have a 22.5 per cent revocation rate, and it seems the greater success rate lies with the public agencies.

The Chairman: I believe you are looking at the wrong figures for that assumption. These percentages are the percentages that each agency has of the revocations. For example, the John Howard Society stands at 16 and 22.5 per cent, respectively; the National Parole Service at 47.3 and 52.6 per cent, respectively.

Senator Thompson: And the "(public) provincial" agencies have 17.2 per cent of the cases, with a revocation rate of 12.3 per cent.

The Chairman: Yes.

Mr. Holt: I suggest you do not look at the percentages but at the number that they have. The John Howard Society, for example, according to the table, has 628, and of those 84 were revoked and 190 forfeited; the National Parole Service has 1,855, with 197 revocations and 409 forfeitures.

Senator Thompson: Yes, and I think you also have to accept as a fact that the National Parole Service probably has the tougher risks and, therefore, a greater challenge in terms of rehabilitation than does the John Howard Society.

The Chairman: From a management point of view, this is the type of data that would be useful in deciding where there should be changes. In other words, they could find differences that would lead them to feel that a particular area needs further research. As you stated earlier, the statistics cannot provide the answers, but they do indicate the area in which the answers should be sought. Is that correct?

Mr. Holt: That is correct.

Senator Thompson: Just to clarify that, Mr. Chairman, assuming we wanted to get research into this to whom do you pass the statistics?

Mr. Holt: These would go to the management data centre of the Solicitor General's department. Our contact with the Solicitor General's department is through that centre.

Senator Thompson: You mentioned that there is one researcher on the Parole Service to whom they go in respect to research.

Mr. Holt: Through the management data centre, yes; and the difficulty is that there is no establishment for the management data centre.

Senator Thompson: What do you mean, "there is no establishment"?

Mr. Holt: They have been given a mandate, but no money and no jobs.

By working in statistics, you tend to find out a fair amount about other agencies, which is really none of your business; but it does become our business when it affects the quality of the work or how the material is going to be used. This is a problem that, as yet, has not been resolved.

The Chairman: Are there any further questions?

Senator Thompson: I think, at least in my own mind, I know the answer to this question, but I am just wondering why it is that the 1970 parole data has not been published.

Mr. Holt: It is principally because of a breakdown in the forwarding of documents from the Parole Service. We are attempting to get the total number of documents through the management data centre. We received a letter late in October, 1971 stating that they had found all the documents it was possible to find, and that we should proceed with what we have. This is one reason why we want computers, to build in a checkback so that we would know the expiry date of these paroles and be able to provide the Parole Service with a list of them, who would have to check off that we had submitted the forms. There is a breakdown in the operation because of this.

Senator Thompson: I do not know if you can answer this. The impression I get is, as we have seen, that the parole officer gets a whole variety of jobs. How much clerical staff does he have to get this information for you?

Mr. Holt: I have no idea.

Senator Thompson: How much time would a clerical employee in the field office have to devote to providing you with the material you want?

Mr. Holt: Very little time. In any office in any one day they are not dealing with many separate cases; they are dealing with only a very small number of cases. I would feel that the parole officer himself could fill in the form, because it is relatively simple, and for most of it he just has to put tick marks.

The Chairman: If he does it as he goes along.

Mr. Holt: Yes. Again, there could be imposed a system of reporting statistics, as in the British Columbia probation service, whereby a man has to sit down and do it at the end of the month. If the other probation officers were like myself, they would sit down to make up the report six months after the month had gone by and submit it. This was fairly common practice. It was not part of the regular work. In all the statistical systems, we are introducing across the country, for courts and everything else, it is put in as part of the regular everyday work, not as something separate. In this way it is much more accurate.

Senator Thompson: Do you think there is a sort of cynicism on the part of parole officers to the questions? Let me give an example. As a probation officer, I recall being requested to ask the cases I interviewed whether they had been breast-fed or bottle-fed. This would be important for some researcher, but it made it very difficult for me to be taken seriously as a probation officer.

Mr. Holt: I would suggest that in the British Columbia set-up what they are doing is reporting for the chief psychiatrist, Dr. Thomas, when that type of question is asked.

Senator Thompson: I did not ask it. I think there might be a feeling of resistance by parole officers to that type of question.

The Chairman: That may be why you are here instead of there.

Mr. Holt: Really, all they are looking for in any pre-sentence report is an indicator of stability or instability, and this can be

checked in a number of very simple areas: How far did he go in school? What were his grades like? Did he keep up or fall behind? What was his work history and his marriage history? What is his criminal record? What is his health history? Are there certain health or psychiatric problems? These are not difficult questions. To sit down and write a probation report, as I have seen, of up to 15 pages is just a waste of time, because everybody knows the magistrate will just turn to the last page and read that.

This is a fault that can occur where people accumulating information, be it for parole, penitentiaries or anything else, feel they have to collect every single item they can lay their hands on; whereas, in reality, what they ought to do is collect perhaps five or six fairly solid facts. Having got those, you can do the cross-referencing and then do the research. The total to be studied can be reduced from, say, 1,000 by doing cross-references on the various pieces of information you know are correct. Do the individual research at that level and you will get the same results. If you collect a whole lot of garbage you get so bogged down in detail, and so much of it is meaningless, that you never produce any results.

The Chairman: Are there any further questions?

Senator Thompson: On behalf of the committee I should like to thank Mr. Holt for his forthright coverage of this subject.

The Chairman: May I suggest that you will be hearing from us? Thank you very much indeed.

The committee adjourned.

"APPENDIX"

Statistics concerning parole

Presented by Mr. K. A. Holt,
Assistant Director,
Judicial Division,
Statistics Canada.

Number of Persons Terminated Parole by Time on Parole, January – December, 1970

TERMINATED

	TOTAL		EXPIRY		REVOCATION		FORFEITURE	
	#	%	#	%	#	%	#	%
Less than 1 month	6	0.2	2	0.1	—	—	4	0.5
1 month	135	3.4	38	1.4	33	8.8	60	7.0
2 months	285	7.3	165	6.2	42	11.2	76	8.9
3 months	493	12.6	356	13.3	48	12.8	84	9.9
4 months	432	11.0	268	10.1	53	14.1	108	12.7
5 months	306	7.8	195	7.3	32	8.6	78	9.1
6 months	270	6.9	167	6.3	32	8.6	69	8.1
7 months	239	6.1	165	6.2	21	5.6	52	6.1
8 months	203	5.2	127	4.8	22	5.9	50	5.9
9 months	180	4.6	121	4.6	9	2.4	48	5.6
10 months	161	4.1	114	4.3	12	3.2	34	4.0
11 months	117	3.0	84	3.2	7	1.9	25	2.9
12 months	167	4.3	121	4.6	13	3.5	32	3.7
13 - 17	448	11.4	353	13.3	27	7.2	66	7.7
18 - 23	224	5.7	178	6.7	9	2.4	35	4.1
24 - 29	91	2.3	71	2.7	4	1.1	15	1.8
30 - 35	43	1.1	32	1.2	4	1.1	6	0.7
36 - 47	76	1.9	64	2.4	3	0.8	8	0.9
48 - 59	22	0.6	21	0.8	1	0.3	—	—
60 and over	20	0.5	13	0.5	2	0.5	3	0.4
Death on Parole	—	—	—	—	—	—	—	—
TOTAL	3,924	100.0	2,659	100.0	374	100.0	854	100.0

TABLE 1 (a)

Number of Persons Denied, Released and Terminated Parole by Age Groups, Canada, January–December, 1970

	DENIALS		RELEASES		TERMINATIONS							
					TOTAL ¹		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
18 under	147	8.6	321	6.2	186	4.7	126	4.7	9	2.4	51	6.0
19	80	4.7	310	6.0	223	5.7	146	5.5	11	2.9	63	7.4
20 - 24	511	30.0	1818	35.0	1344	34.3	933	35.1	90	24.1	314	36.7
25 - 29	353	20.7	1102	21.2	846	21.6	567	21.3	81	21.7	191	22.4
30 - 34	220	12.9	621	11.9	479	12.2	316	11.9	71	19.0	90	10.5
35 - 39	138	8.1	391	7.5	308	7.8	202	7.6	45	12.0	56	6.6
40 - 44	97	5.7	248	4.8	208	5.3	137	5.2	33	8.8	36	4.2
45 - 49	76	4.5	156	3.0	133	3.4	86	3.2	19	5.1	26	3.0
50 - 59	57	3.3	159	3.1	119	3.0	89	3.3	10	2.7	15	1.8
60 - 69	14	0.8	36	0.7	34	0.9	26	1.0	2	0.5	5	0.6
70 over	—	—	5	0.1	7	0.2	4	0.2	—	—	—	—
Not stated	13	0.7	26	0.5	37	0.9	27	1.0	3	0.8	7	0.8
TOTAL	1706	100.0	5193	100.0	3924	100.0	2659	100.0	374	100.0	854	100.0

¹Total includes "death" and "other reasons" as well as "regular expiry", "revocation" and "forfeiture"

TABLE 1 (b) - 1 - FEDERAL

Number of Persons Denied, Released and Terminated Parole by Institution
at time of Denial or Release, January - December, 1970

	DENIED		RELEASED		TERMINATIONS							
					Total		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Her Majesty's Penitentiary	—	—	2	0.1	2	0.1	—	—	—	—	2	0.3
Springhill	20	2.9	161	5.9	121	6.9	58	6.5	11	4.3	51	8.8
Dorchester	73	10.7	122	4.5	108	6.1	59	6.7	16	6.2	32	5.5
Total Eastern	93	13.6	285	10.5	231	13.1	117	13.2	27	10.5	85	14.6
St Vincent de Paul	55	8.0	135	5.0	111	6.3	65	7.3	9	3.5	35	5.9
Federal Training Centre	20	2.9	232	8.6	179	10.2	107	12.0	14	5.5	58	9.9
Leclerc	63	9.2	188	6.9	85	4.8	55	6.2	9	3.5	20	3.4
Cowansville	51	7.5	157	5.8	72	4.1	44	4.9	4	1.5	21	3.6
Special Correctional Unit	6	0.9	4	0.1	1	0.1	—	—	—	—	1	0.2
Archambault	44	6.4	48	1.8	16	0.9	6	0.7	4	1.5	5	0.9
St Hubert	—	—	—	—	2	0.1	1	0.1	—	—	1	0.2
Total Quebec	239	34.9	767	28.2	466	26.5	278	31.2	40	15.5	141	24.1
Prison for Women	6	0.9	31	1.1	30	1.7	18	2.0	6	2.3	6	1.0
Kingston Penitentiary	24	3.5	79	2.9	48	2.7	15	1.7	14	5.4	17	2.9
Collins Bay	50	7.3	278	10.3	194	11.1	106	11.9	23	8.9	65	11.1

TABLE 1 (b) - 1 - FEDERAL (Continued)

	DENIED		RELEASED		TERMINATIONS							
					Total		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Joyceville	56	8.1	182	6.7	109	6.2	54	6.1	18	7.0	35	6.0
Warkworth	12	1.8	133	4.9	60	3.4	30	3.4	8	3.1	22	3.8
Total Ontario	148	21.6	703	25.9	441	25.1	223	25.1	69	26.7	145	24.8
Manitoba	44	6.5	202	7.4	127	7.2	53	6.0	18	6.9	53	9.0
Saskatchewan	30	4.4	156	5.7	117	6.7	44	4.9	30	11.5	42	7.2
Alberta	29	4.2	179	6.6	88	5.0	35	3.9	18	6.9	35	6.0
Matsqui—Women	2	0.3	24	0.9	14	0.8	7	0.8	5	1.9	2	0.3
Matsqui—Men	47	6.9	238	8.7	133	7.6	57	6.5	18	7.0	25	4.3
British Columbia Penitentiary	43	6.3	94	3.5	97	5.5	50	5.6	25	9.6	47	8.0
William Head	9	1.3	70	2.6	44	2.5	25	2.8	9	3.5	10	1.7
West Georgia Centre	—	—	1	—	—	—	—	—	—	—	—	—
Total British Columbia	101	14.8	427	15.7	288	16.4	139	15.7	57	22.0	84	14.3
Total Western	204	29.9	961	35.4	620	35.3	271	30.5	122	47.3	213	36.5
Total Federal	684	40.1	2719	52.4	1759	44.8	889	33.4	258	69.3	584	68.5

TABLE 1 (b) - 2 - PROVINCIAL

	DENIED		RELEASED		TERMINATIONS							
					Total		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Newfoundland	35	2.1	97	1.9	109	2.8	98	3.7	1	0.3	8	0.9
Prince Edward Island	4	0.2	12	0.2	9	0.2	9	0.3	—	—	—	—
Nova Scotia	19	1.1	117	2.3	106	2.7	96	3.6	3	0.8	7	0.8
New Brunswick	37	2.2	154	2.9	137	3.5	116	4.4	6	1.6	13	1.6
Total Eastern	95	5.6	380	7.3	361	9.2	319	12.0	10	2.7	28	3.3
Quebec	200	11.7	512	9.9	461	11.7	403	15.2	12	3.2	44	5.2
Ontario	318	18.6	702	13.5	570	14.6	470	17.7	28	7.5	69	8.1
Manitoba	55	3.2	158	3.0	141	3.6	114	4.3	5	1.3	22	2.6
Saskatchewan	54	3.2	129	2.5	113	2.9	70	2.6	11	2.9	32	3.7
Alberta	135	7.9	318	6.2	264	6.7	195	7.3	28	7.5	40	4.7
British Columbia	157	9.2	262	5.0	247	6.2	195	7.3	19	5.1	32	3.7
Yukon	7	0.4	7	0.1	6	0.2	2	0.1	2	0.5	2	0.2
North West Territories	1	0.1	5	0.1	2	0.1	2	0.1	—	—	—	—
Total Western	409	24.0	879	16.9	773	19.7	578	21.7	65	17.3	128	14.9
Total Provincial	1022	59.9	2473	47.6	2165	55.2	1770	66.6	115	30.7	269	31.5
Other	—	—	1	—	—	—	—	—	—	—	—	—
TOTAL CANADA	1706	100.0	5193	100.0	3924	100.0	2659	100.0	374	100.0	854	100.0

Table 1 (c)

Number of Persons Denied, Released and Terminated Parole by Aggregate Sentence, January – December, 1970

	DENIALS		RELEASES		TERMINATIONS							
					TOTAL		EXPIRY		REVOCATION		FORFEITURE	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Definite – Indefinite	94	5.5	209	4.0	224	5.7	175	6.6	14	3.7	33	3.9
Under 3 months	6	0.4	21	0.4	16	0.4	16	0.6	—	—	—	—
3, under 6	36	2.1	157	3.0	122	3.1	117	4.4	3	0.8	2	0.2
6, under 9	209	12.3	579	11.1	540	13.8	501	18.8	12	3.2	27	3.2
9, under 12	81	4.7	221	4.3	209	5.3	179	6.7	7	1.9	22	2.6
12, under 18	364	21.3	774	14.9	699	17.9	551	20.7	38	10.1	105	12.2
18, under 24	160	9.4	351	6.8	256	6.5	173	6.5	29	7.8	53	6.2
TOTAL UNDER 2 YEARS	950	55.7	2312	44.5	2066	52.7	1712	64.2	103	27.5	242	28.3
2 years, under 3	406	23.8	1407	27.1	1009	25.7	549	20.7	132	35.3	318	37.3
3 years, under 4	197	11.6	636	12.2	380	9.7	189	7.5	48	12.8	137	16.1
4 years, under 5	63	3.7	249	4.8	131	3.3	55	2.1	27	7.2	49	5.7
5 years, under 6	49	2.9	214	4.1	123	3.1	63	2.2	16	4.3	43	5.0
6 years, under 10	34	1.9	185	3.6	111	2.8	65	2.4	17	4.5	28	3.3
10 years, under 15	4	0.2	77	1.5	54	1.4	16	0.6	19	5.1	17	2.0
15 years, under 20	3	0.2	36	0.7	16	0.4	6	0.2	1	0.3	8	0.9
20 years, over	—	—	6	0.1	3	0.1	3	0.1	—	—	—	—
Life	—	—	27	0.5	4	0.1	1	—	1	0.3	1	0.1
Death Commuted	—	—	14	0.3	3	0.1	—	—	1	0.3	—	—
Preventive Detention	—	—	30	0.6	24	0.6	—	—	9	2.4	11	1.1
TOTAL 2 YEARS AND OVER ..	756	44.3	2881	55.5	1858	47.3	947	35.6	271	72.5	612	71.7
TOTAL	1706	100.0	5193	100.0	3924	100.0	2659	100.0	374	100.0	854	100.0

Table 1 (d)

Number of Persons Denied, Released and Terminated Parole by Selected Major Offences, January – December 1970

	DENIED		RELEASED		TERMINATIONS							
					TOTAL		EXPIRY		REVOCATION		FORFEITURE	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Breaking and Entering :	418	24.5	1386	26.7	1116	28.4	719	27.0	74	19.8	313	36.6
Theft	264	15.4	683	13.2	570	14.5	391	14.7	50	13.4	126	14.7
Frauds	250	14.7	532	10.3	409	10.4	261	9.8	58	15.5	86	10.1
Robbery	157	9.2	742	14.3	478	12.1	283	10.6	70	18.8	116	13.6
Assaults	103	6.0	201	4.6	152	3.9	121	4.6	16	4.3	15	1.8
Narcotic Control Act	68	4.0	332	6.4	222	3.5	167	6.3	21	5.6	30	3.5
Rape	15	0.9	88	1.7	50	1.3	39	1.5	4	1.1	7	0.8
Murder	2	0.1	37	0.7	7	0.2	—	—	2	0.5	2	0.2
Habitual Criminal	—	—	1	—	3	0.1	—	—	2	0.5	1	0.1
TOTAL OFFENCE GROUPS ...	1706	100.0	5193	100.0	3924	100.0	2659	100.0	374	100.0	854	100.0

Table 1 (e)
Number of Persons Denied, Released and Terminated Parole by Selected Previous Criminal
History and Drug Use Before Current Incarceration, January – December, 1970.

	DENIALS		RELEASES		TERMINATIONS							
					TOTAL		EXPIRY		REVOCATIONS		FORFEITURE	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
PREVIOUS CONVICTIONS												
YES	1539	90.2	4036	77.7	2954	75.3	1839	69.2	338	90.4	746	87.4
NO	122	7.2	1038	20.0	861	21.9	724	27.2	31	8.3	100	11.7
N/S	45	2.6	119	2.3	109	2.8	96	3.6	5	1.3	8	0.9
PREVIOUS PENITENTIARY												
YES	546	32.0	1091	21.0	685	17.5	304	11.4	129	34.5	239	28.0
NO	1110	65.1	3973	76.5	3119	79.4	2250	84.7	239	63.9	606	70.9
N/S	50	2.9	129	2.5	120	3.1	105	3.9	6	1.6	9	1.1
PREVIOUS PAROLE												
YES	461	27.0	1173	22.6	739	18.8	389	14.6	116	31.0	226	26.5
NO	1199	70.3	3896	75.0	3064	78.1	2164	81.4	252	67.4	619	72.4
N/S	46	2.7	126	2.4	121	3.1	106	4.0	6	1.6	9	1.1
PREVIOUS PAROLE VIOLATOR												
YES	268	15.7	610	11.7	312	8.0	115	4.3	67	17.9	128	15.0
NO	1397	81.9	4511	86.9	3560	90.7	2503	94.2	304	81.3	718	84.1
N/S	41	2.4	72	1.4	52	1.3	41	1.5	3	0.8	8	0.9
DRUG USER												
YES	34	2.0	222	4.3	142	3.6	73	2.7	24	6.4	39	4.6
NO	1629	95.5	4931	94.9	3754	95.7	2569	96.7	348	93.1	806	94.3
N/S	43	2.5	40	0.8	28	0.7	17	0.6	2	0.5	9	1.1
TOTAL	1706	100.0	5193	100.0	3924	100.0	2659	100.0	374	100.0	854	100.0

TABLE 2 (a)
Number of Persons who Terminated Parole for all Offence Groups and for Offences
of Breaking and Entering and Robbery, by Type of Termination, January – December, 1970.

	All Offence Groups		Breaking and Entering		Robbery	
	No.	%	No.	%	No.	%
Expiry	2659	67.8	719	64.4	283	59.2
Revocation	374	9.5	74	6.6	70	14.6
Forfeiture	854	21.8	313	28.0	116	24.3
TOTAL TERMINATIONS	3924	100.0	1116	100.0	478	100.0

TABLE 2 (b)
Number of Persons who Terminated Parole by Supervision, January – December, 1970.

	TERMINATIONS							
	Total		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%
John Howard Society	628	16.0	344	12.9	84	22.5	190	22.2
Other Private	601	15.3	425	16.0	41	11.0	132	15.5
(Public) Municipal	10	0.3	6	0.2	1	0.3	3	0.4
(Public) Provincial	675	17.2	522	19.6	46	12.3	100	11.7
(Public) Federal	5	0.1	5	0.2	—	—	—	—
(Public) Territorial	1	—	1	—	—	—	—	—
National Parole Service	1855	47.3	1234	46.5	197	52.6	409	47.9
Other	40	1.0	22	0.8	2	0.5	14	1.6
No Supervision	109	2.8	100	3.8	3	0.8	6	0.7
TOTAL	3924	100.0	2659	100.0	374	100.0	854	100.0

TABLE 2 (c)
Number of Persons who Terminated Parole by Destination, January – December, 1970

	TERMINATIONS							
	Total		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%
Newfoundland	117	3.0	100	3.8	2	0.5	14	1.6
Prince Edward Island	15	0.4	11	0.4	1	0.3	3	0.4
Nova Scotia	209	5.3	148	5.6	15	4.0	45	5.2
New Brunswick	214	5.4	156	5.8	16	4.3	39	4.6
Total Eastern	555	14.1	415	15.6	34	9.1	101	11.8
Quebec	922	23.5	676	25.5	49	13.1	188	22.0
Ontario	1010	25.8	677	25.5	104	27.8	220	25.8
Manitoba	272	6.9	158	5.9	24	6.4	86	10.1
Saskatchewan	157	4.0	87	3.3	21	5.6	48	5.6
Alberta	378	9.6	224	8.4	58	15.5	94	11.0
British Columbia	622	15.9	416	15.6	83	22.2	116	13.6
Yukon & Northwest Territories	8	0.2	6	0.2	1	0.3	1	0.1
Total Western	3369	85.9	2244	84.4	187	50.0	345	40.4
Total Canada	3924	100.0	2659	100.0	374	100.0	854	100.0

TABLE 2 (d)
Number of Persons who Terminated Parole by Special Conditions of Parole, January – December, 1970.

	TERMINATIONS							
	Total		Expiry		Revocation		Forfeiture	
	No.	%	No.	%	No.	%	No.	%
None	2653	67.6	1870	70.3	208	55.6	552	59.7
Abstain from Alcohol	856	21.8	486	18.2	139	37.2	221	25.9
Abstain from Drugs	30	0.8	21	0.8	—	—	8	0.9
Avoid Specified Places	53	1.4	31	1.2	7	1.9	14	1.6
Avoid Specified Persons	93	2.3	72	2.7	2	0.5	18	2.1
To be of Good Behaviour	—	—	—	—	—	—	—	—
Avoid Gambling	7	0.2	5	0.2	1	0.3	1	0.1
Obtain Psychiatric Treatment	64	1.6	40	1.5	5	1.3	19	2.2
Not to own Vehicle	4	0.1	4	0.2	—	—	—	—
Other Conditions	106	2.7	79	3.0	10	2.7	16	1.8
Short Parole	58	1.5	51	1.9	2	0.5	5	0.6
TOTAL	3924	100.0	2659	100.0	374	100.0	854	100.0

TABLE 3 (a) – 1 – FEDERAL
Number of Persons Denied or Released on Parole,
Major Offence of Breaking and Entering,
by Institution, at time of Release or Denial.
January – December, 1970

	DENIED		RELEASED			DENIED		RELEASED	
	No.	%	No.	%		No.	%	No.	%
Her Majesty's Penitentiary	—	—	1	0.1	Collins Bay	13	3.1	77	5.5
Springhill	5	1.2	52	3.8	Joyceville	13	3.1	50	3.6
Dorchester	21	5.0	45	3.2	Warkworth	2	0.5	33	2.3
Total Eastern	26	6.2	98	7.1	Total Ontario	37	8.9	176	12.6
St Vincent de Paul	10	2.4	29	2.1	Manitoba	8	2.0	64	4.7
Federal Training Centre	6	1.4	76	5.5	Saskatchewan	6	1.4	45	3.2
Leclerc	13	3.1	35	2.5	Alberta	7	1.7	54	3.9
Cowansville	20	4.8	40	2.9	Matsqui—Women	1	0.2	1	0.1
Special Correctional Unit	2	0.5	2	0.1	Matsqui—Men	5	1.2	44	3.1
Archambault	16	3.8	15	1.1	British Columbia Penitentiary ...	9	2.2	15	1.1
St Hubert	—	—	—	—	William Head	1	0.2	11	0.8
Total Quebec	67	16.0	197	14.2	West Georgia Centre	—	—	1	0.1
Prison for Women	—	—	1	0.1	Total British Columbia	16	3.8	72	5.2
Kingston Penitentiary	9	2.2	15	1.1	Total Western	37	8.9	235	17.0
					Total Federal	167	40.0	706	50.9

TABLE 3 (a) - 2 - PROVINCIAL

	DENIED		RELEASED	
	No.	%	No.	%
Newfoundland	15	3.6	49	3.5
Prince Edward Island	2	0.5	3	0.2
Nova Scotia	3	0.7	25	1.8
New Brunswick	11	2.6	64	4.7
Total Eastern	31	7.4	141	10.2
Quebec	53	12.7	154	11.1
Ontario	80	19.1	189	13.6
Manitoba	17	4.1	39	2.9
Saskatchewan	10	2.4	38	2.7
Alberta	29	6.9	72	5.2
British Columbia	29	6.9	41	3.0
Yukon	2	0.5	4	0.3
North West Territories	—	—	2	0.1
Total Western	87	20.8	197	14.2
Total Provincial	251	60.0	680	49.1
TOTAL CANADA	418	100.0	1386	100.0

Table 3(b)

Number of Persons Denied or Released on Parole,
Major Offence of Breaking and Entering
by Aggregate Sentence
January - December, 1970.

	DENIALS		RELEASE	
	No.	%	No.	%
Definite - Indefinite	34	8.1	56	4.0
Under 3 months	—	—	2	0.1
3, under 6	4	1.0	28	2.0
6, under 9	53	12.7	153	11.0
9, under 12	17	4.1	66	4.8
12, under 18	88	21.0	239	17.3
18, under 24	40	9.6	102	7.4
2 years, under 3	98	23.4	432	31.2
3 years, under 4	48	11.5	171	12.3
4 years, under 5	19	4.5	59	4.3
5 years, under 6	12	2.9	39	2.8
6 years, under 10	5	1.2	25	1.8
10 years, under 15	—	—	9	0.6
15 years, under 20	—	—	—	—
20 years, over	—	—	—	—
Life	—	—	1	0.1
Death Commuted	—	—	—	—
Preventive Detention	—	—	4	0.3
TOTAL	418	100.0	1386	100.0

Table 3 (c)

Number of Persons Denied or Released on Parole,
Major Offence of Breaking and entering
by Selected Previous Criminal History
and Drug Use Before Current Incarceration
January - December, 1970.

	DENIALS		RELEASES	
	No.	%	No.	%
PREVIOUS CONVICTIONS				
YES	383	91.6	1153	83.2
NO	27	6.5	196	14.1
N/S	8	1.9	37	2.7
PREVIOUS PENITENTIARY				
YES	137	32.8	300	21.6
NO	273	65.3	1044	75.4
N/S	8	1.9	42	3.0
PREVIOUS PAROLE				
YES	111	26.6	345	24.9
NO	299	71.5	1001	72.2
N/S	8	1.9	40	2.9
PREVIOUS PAROLE VIOLATOR				
YES	66	15.8	183	13.2
NO	345	82.5	1180	85.1
N/S	7	1.7	23	1.7
DRUG USER				
YES	4	1.0	26	1.9
NO	404	96.6	1349	97.3
N/S	10	2.4	11	0.8
TOTAL	418	100.0	1386	100.0

TABLE 4 (a) - 1 - FEDERAL

Number of Persons Denied or Released on Parole,
Major offence of Robbery, by Institution,
at time of Release or Denial,
January - December, 1970.

	DENIED		RELEASED	
	No.	%	No.	%
Her Majesty's Penitentiary	—	—	—	—
Springhill	—	—	17	2.3
Dorchester	6	3.8	18	2.4
Total Eastern	6	3.8	35	4.7
St. Vincent de Paul	17	10.9	39	5.3
Federal Training Centre	9	5.7	79	10.6
Leclerc	11	7.1	60	8.1
Cowansville	9	5.7	54	7.3
Special Correctional Unit	1	0.6	1	0.1
Archambault	13	8.3	14	1.9
St. Hubert	—	—	1	0.1
Total Quebec	60	38.3	248	33.4
Prison for Women	—	—	2	0.3
Kingston Penitentiary	4	2.5	18	2.4
Collins Bay	5	3.2	46	6.2
Joyceville	2	1.3	21	2.8
Warkworth	3	1.9	28	3.8
Total Ontario	14	8.9	115	15.5
Manitoba	4	2.5	31	4.2
Saskatchewan	4	2.5	24	3.2
Alberta	4	2.5	30	4.0
Matsqui-Women	—	—	—	—
Matsqui-Men	5	3.2	31	4.2
British Columbia Penitentiary ...	7	4.5	19	2.6
William Head	1	0.6	15	2.0
West Georgia Centre	—	—	—	—
Total British Columbia	13	8.3	65	8.8
Total Western	25	15.8	150	20.2
Total Federal	105	66.8	548	73.9

TABLE 4 (a) - 2 - PROVINCIAL

	DENIED		RELEASED	
	No.	%	No.	%
Newfoundland	1	0.6	1	0.1
Prince Edward Island	—	—	1	0.1
Nova Scotia	—	—	4	0.5
New Brunswick	1	0.6	4	0.5
Total Eastern	2	1.2	10	1.2
Quebec	16	10.2	53	7.2
Ontario	15	9.6	64	8.7
Manitoba	1	0.6	10	1.2
Saskatchewan	3	1.9	15	2.1
Alberta	8	5.1	24	3.3
British Columbia	5	3.2	17	2.3
Yukon	2	1.3	1	0.1
North West Territories	—	—	—	—
Total Western	19	12.1	67	9.0
Total Provincial	52	33.1	194	26.1
TOTAL CANADA	157	100.0	742	100.0

Table 4 (b)

Number of Persons Denied or Released on Parole,
Major Offence of Robbery by Aggregate Sentence,
January - December, 1970.

	DENIALS		RELEASES	
	No.	%	No.	%
Definite - Indefinite	5	3.2	31	4.2
Under 3 months	—	—	—	—
3, under 6	—	—	3	0.4
6, under 9	4	2.5	35	4.7
9, under 12	1	0.6	6	0.8
12, under 18	20	12.7	44	5.9
18, under 24	11	7.0	37	5.0
2 years, under 3	47	30.0	192	25.9
3 years, under 4	33	21.1	126	17.0
4 years, under 5	12	7.6	55	7.4
5 years, under 6	10	6.4	77	10.4
6 years, under 10	8	5.1	77	10.4
10 years, under 15	4	2.5	29	3.9
15 years, under 20	2	1.3	24	3.2
20 years, over	—	—	3	0.4
Life	—	—	2	0.3
Death Commuted	—	—	—	—
Preventive Detention	—	—	1	0.1
TOTAL	157	100.0	742	100.0

Table 4 (c)

Number of Persons Denied or Released on Parole,
Major Offence of Robbery by Selected
Previous Criminal History and Drug Use
Before Current Incarceration
January - December, 1970.

	DENIALS		RELEASES	
	No.	%	No.	%
PREVIOUS CONVICTIONS				
YES	141	89.8	567	76.4
NO	15	9.6	169	22.8
N/S	1	0.6	6	0.8
PREVIOUS PENITENTIARY				
YES	58	36.9	160	21.6
NO	98	62.5	576	77.6
N/S	1	0.6	6	0.8
PREVIOUS PAROLE				
YES	35	22.3	145	19.5
NO	121	77.1	591	79.7
N/S	1	0.6	6	0.8
PREVIOUS PAROLE VIOLATOR				
YES	14	8.9	68	9.2
NO	142	90.5	669	90.1
N/S	1	0.6	5	0.7
DRUG USER				
YES	1	0.6	22	3.0
NO	155	98.8	717	96.6
N/S	1	0.6	3	0.4
TOTAL	157	100.0	742	100.0



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

No. 5

THURSDAY, MARCH 16, 1972

Seventh Proceedings on the examination of the
parole system in Canada

(Witness and Appendices—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue, H.	Hayden, S. A.
Buckwold, S. L.	Lair, K.
Burchill, G. P.	Lang, D.
Choquette, L.	Langlois, L.
Connolly, J. J. (<i>Ottawa West</i>)	Macdonald, J. M.
Croll, D. A.	*Martin, P.
Eudes, R.	McGrand, F. A.
Everett, D. D.	Prowse, J. H.
Fergusson, M. McQ.	Quart, J. D.
*Flynn, J.	Sullivan, J. A.
Fournier, S.	Thompson, A. E.
(<i>de Lanaudière</i>)	Walker, D. J.
Goldenberg, C.	White, G. S.
Gouin, L. M.	Williams, G.
Haig, J. C.	Willis, H. A.
Hastings, E. A.	Yuzyk, P.—30

*Ex officio members: Flynn and Martin.

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside of outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, March 16, 1972.

(7)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators: Prowse (*Chairman*), Argue, Burchill, Eudes, Fergusson, Flynn, Haig, McGrand and Thompson.
(9)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Réal Jubinville, Executive Director; Mr. Patrick Doherty, Special Research Assistant.

The Committee proceeded to the examination of the parole system in Canada.

Dr. Tadeusz Grygier, Professor, Centre of Criminology, University of Ottawa, was heard by the Committee.

On motion of the Honourable Senator Fergusson it was *Resolved* to include Dr. Grygier's Brief to the Committee as well as a publication entitled "Decision and Outcome; Studies in Parole Prediction" in this day's proceedings. They are printed as Appendices "A" and "B".

At 11.40 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, March 16, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us this morning Dr. Tadeusz Grygier, Director, Centre of Criminology, University of Ottawa. I am going to ask Dr. Grygier to state for the record his qualifications.

Dr. Tadeusz Grygier, Director, Centre of Criminology, University of Ottawa: I hold three degrees. My first degree was in political science, the second in law, and the third a doctorate in social psychology, which is a combination, if you will, of sociology and psychology. I was also admitted to the Bar.

I have worked as the head of a research Department concerned with political science, and then later as a professional psychologist. I am presently a university professor and Director of the Centre of Criminology, University of Ottawa. I am also Chairman of the Department of Criminology, which teaches graduate courses, so that on the one hand my duties are those of a professor and on the other hand they are more oriented towards research, mainly applied research.

Perhaps the best introduction to applied criminology I had was when I was deported to Siberia. This provided me with quite an insight into what happens under confinement, and confirmed my interest in criminology which had started before the war.

I have acted as a consultant to various governments and to the United Nations Organization on problems of parole and prediction. Also, I have just completed a monograph at the request of the United Nations. I have also done research on the use of prediction methods in parole.

I think that outlines my qualifications, Mr. Chairman.

The Chairman: Thank you very much. We have had your material for some time. I am not sure whether everybody has read all of it, but I am sure we have all worked on it. We ordinarily take it as read. Would you care to make a brief opening statement on the material that you have supplied?

Dr. Grygier: Probably it would be useful for honourable senators to look at the brief again rather than my reading it now. Everybody could read it in his own language. At the moment I am speaking in English.

[*Translation*]

Dr. Grygier: I will be pleased to reply in French to any questions you may ask me in that language.

[*Text*]

Senator Fergusson: Does the witness mean we could have the brief included in the record?

The Chairman: Yes.

Senator Fergusson: I move that it be printed as an appendix.

The Chairman: Would that include the two documents attached?

Senator Haig: No.

The Chairman: I would suggest that the one entitled "Decision and Outcome: Studies in Parole Prediction" be appended, because it deals specifically with the problems we are discussing. I think it would be very useful to have that included. The one entitled "Crime and Society – Definitions and Concepts" is broader and goes quite beyond the field of our rather limited inquiry at the moment.

Senator Fergusson: Then I will amend my motion to include "Decision and Outcome: Studies in Parole Prediction".

The Chairman: Is that agreed?

Hon. Senators: Agreed.

See appendices "A" and "B"

The Chairman: Doctor, do you have anything to add?

Dr. Grygier: I would rather reply to questions.

Senator Thompson: Doctor, I was very interested in your thought-provoking article, which I appreciated very much. My

assumption is that we, the legislatures, have decided which are the activities by human beings in our society that would be termed crimes. We have decided that for certain of these activities we will put people in institutions. This committee is now studying methods by which these people will be rehabilitated. Having first decided that their activity is a crime and having put them into an institution, which you might feel is questionable for rehabilitation, we are now deciding, on a selective basis, how to put them back into society.

I suspect that in the list of activities that we, the legislatures, make crimes you would point out that if we decided they were not crimes we would not have any problem about parole. You suggest that the virgins are sacrificed to these dragons. Perhaps instead of trying to concentrate on the virgins, and the characteristics of the virgins, we should look at the dragons. The implication I got was that you might suggest that in our country we have too great a list of activities that we are calling crimes. We have removed activities of homosexuality from the list of crimes. Would you suggest to us other areas that we, as a civilized country, should be thinking of as not being an activity of crime?

Dr. Grygier: Probably my main battle is not against crimes that are unnecessarily crimes, but against unnecessary definitions. For instance, I would abolish rape from the law books. I would certainly not introduce hi-jacking. It does not mean they should be legal; they already are illegal. The use of threat, intimidation and so on is illegal anyway. It does not particularly matter whether it is for the purpose of getting money or for the purpose of getting sexual satisfaction. The range of sanctions is wide enough; we do not need duplication: therefore, I would be much more economical.

The second major principle I think I would use is to try to see at all times whether there are real or potential victims, creating a danger means that there are no actual victims; there is only a potential victim, or number of victims. In all attempts, by definition there are no victims, but if there are no victims and no potential victims, then there should be no crime.

Yesterday I attended a conference at which a very interesting question was put to me, namely: Should having sexual relations with a mental defective be a crime if a mental defective really wants to have sex? If a mental defective does want it, is he or she a victim? Quite frankly, it puzzled me, but I must admit that probably I would abolish this type of offence. But exploitation so that the mental defective is in fact a victim, should, of course, not be permitted. That is a different matter.

I would regard children subject to sexual advances as probably victims, although not to the extent that it is generally believed. Again, there has been a great deal of research on this, and I have done some of this type of research myself. It appears that there is less abnormality in the offender; there is much more pathology in the child offended against, and very often the child seduces the old or middle-aged man, for instance. One might even say that he is a victim of possibly a young child who is a recidivist. I remember a case when I was doing some research in training schools. There was a really charming very young girl with enormous eyes, a beautiful young girl; she was not even 10. One would think, "Now what is she

doing in a training school?" Well, she had been seducing men for years, on numerous occasions; she was not just a victim.

I think one should look very carefully at these two areas, at least. Do we really need this offence, even if the activity should be prohibited? Perhaps it is already prohibited. Secondly, is this activity really creating a danger to people and not just upsetting the moral standards of possibly an out-of-date generation? In this respect I sometimes find myself a victim of the generation gap, but I am at the wrong end of it; I am with the younger generation.

Senator Thompson: Having accepted the questioning of certain activities to be considered crime, do you feel that our country is inclined to be slap-happy about the number of people we put in institutions in comparison with other countries? Are we more prone to say that a man should be isolated in an institution for an activity of so-called crime?

Dr. Grygier: It is very difficult to make international comparisons. In December I was in Paris attending hearings before a French court. I sincerely hope that the savage sentence there imposed would not, on the average at least, happen here. I think here it would be regarded as exceptional. Was it exceptional there? No. I talked to lawyers who more or less predicted what it would be. Therefore, there it was not unusual in its severity. I would not make this prediction for Canada.

I myself believe that it is very difficult to compare statistics internationally. For instance, you improve the efficiency of the police and you immediately have an increase in crime, as statistically recorded. Inefficient police do not even hear about the crime, because there is no point in informing the police. Corrupt police will not record the crime, and so on. In the end, the high rate of crime may reflect efficiency rather than inefficiency of police activities.

It is very difficult to make international comparisons. This does not necessarily mean that I am opposed to looking at other jurisdictions, especially at other laws. On the contrary, in this respect Canada is in the best possible position to take advantage of the common law, of *droit civil*, of European experience, of American experience. We are just not making enough use of them.

Senator Thompson: Without making comparisons, then, internationally, do you feel that we are slap-happy with respect to the number of people we put in institutions?

Dr. Grygier: I am not absolutely sure. I think there are certain occasions when I am sure we should avoid it. Again, incest is one of them.

Senator Thompson: Would you pin down the other occasions?

Dr. Grygier: Sometimes, again, sex offences against children. Why am I particularly concerned with sex? This is where I think the public is so easily outraged and so easily unreasonable. This does not mean that I would regard all sex offenders as safe, or as not offenders at all. Oh no, not at all. Even exhibitionists create nuisance. Yes, it should not be permitted.

Senator Thompson: It should not be permitted?

Dr. Grygier: It should not be permitted. It is a nuisance offence; it is not a major offence.

Senator Thompson: In a nightclub, it would attract quite a number of people.

Dr. Grygier: That is a different thing. If they do attract, then I think it should be permitted, but that is another matter. I have just received . . .

Senator Thompson: I am sorry to interrupt you, but the question was asked by another doctor: What is the difference between a nightclub performance and an exhibitionist?

Dr. Grygier: I am suggesting that people who are victims should be protected, but people who are even willing to pay are obviously not victims.

Senator Thompson: That would apply to prostitution?

The Chairman: Beauty is in the eye of the beholder.

Dr. Grygier: Prostitution, if it is annoying, is similar to parking, not allowing the proper flow of traffic; it is an offence, and rightly so, but I would not regard it as a major offence.

Senator Thompson: As I say, yours is a provocative paper, and we are pursuing the matter in that style.

The Chairman: Having been so provoked on the definitions of crime, can we get on now with the corrections?

Senator Thompson: Mr. Chairman, with respect, I think that the doctor's paper is an effective one. If we did not have a definition of crime, we would not need parole or anything else. It is a fundamental question.

The Chairman: I appreciate that, and I think the questions have elicited the answers necessary for evaluation. Would you continue, Senator Thompson?

Senator Thompson: I have many other questions.

Dr. Grygier: May I just bring up this particular point which is more or less pertinent to the question before us? If we regard the function of the criminal law, generally speaking, as the protection of society, including the offender, then what is the function of parole? It is basically the same. But parole specifically is looking into the future. Therefore, parole decisions are really concerned with the danger presented by the offender. This is in two terms: firstly, the probability that another offence is going to occur; and, secondly, the gravity of this offence. I know that even before this committee a particular case was mentioned, the case of middle-class offenders who were released on parole rather early. Whatever is the political wisdom of this, if my general premise is accepted—that we should

calculate the risk, that we should even use computers in order to calculate the risk more precisely—I would say the computer would agree with the Parole Board in this particular decision.

Senator Thompson: My concern, doctor, with your computerized prediction of the success of paroling is really that I wonder if a computer can analyze motivation, compassion, shame—human emotions. Surely these must play a part in connection with success of rehabilitation?

Dr. Grygier: I agree, and this is the reason why I would not leave the decisions to the computer. But even when I think and make a judgment about anything myself, without using the computer—because I cannot use the computer—I know that a great deal of my judgment is based on calculation, on the inefficient computer that I have in my brain. The rest, yes, is compassion, empathy, various aspects that could not be calculated. They are there, but I want to know what the calculations are leading me to, and then make a judgment.

Senator Fergusson: Why is it that in Canada there is such a revulsion amongst the general public to some of the things we call crimes but which you apparently do not think are so serious? Why have we this strong feeling? I am thinking of the riot in Kingston, when those who were attacked were people who had committed similar crimes.

Dr. Grygier: There is no greater prejudice against sex offenders than among other offenders.

Senator Fergusson: There is not?

Dr. Grygier: It is the offenders against property, especially, who despise sex offenders.

Senator Fergusson: Yes.

Dr. Grygier: If the punishment of sex offenders were left to property offenders, they would probably execute them all.

Senator Fergusson: But why is it in Canada we have this feeling?

Dr. Grygier: I do not think it is exclusively in Canada.

Senator Fergusson: Do you not?

Dr. Grygier: Last spring I visited at least eight European countries, to try to see the operation of juvenile justice systems. In this case, I was not only examining the laws and watching the procedure before juvenile courts—where they were established—but was also talking to delinquent children in these various countries.

The interesting thing is that even in Sweden, which is supposed to be so extremely tolerant, tolerance is very much more on the books than in the minds of the older generation. The generation gap in Sweden is so noticeable that there are just completely two societies living apart, one older and the other younger. In Denmark it is much less so. But, in Sweden, it is a part of the older

generation's ethic to be tolerant of various things; so they are tolerant. However, it does not necessarily mean that they approve; they thoroughly disapprove of various things that the younger generation does. In Denmark the difference is much less. So, Canada is certainly not the only country that has these hang-ups, so to speak.

Senator Fergusson: Thank you.

Senator Thompson: I would like to follow through on your predictions.

The Chairman: This is on the parole area rather than the general criminal area?

Senator Thompson: Yes. I was very surprised that in your paper, Dr. Grygier, the first positive characteristic for success in parole was release from a Quebec penitentiary. Could you qualify that for us? Is it because it is tougher in a Quebec penitentiary, or is it because they are doing a better job of rehabilitating there, or what?

Dr. Grygier: This is an example where possibly a failure in one part of the criminal justice system leads to the apparent success at the other end of the criminal justice system.

Senator Thompson: I am sorry, but I do not follow you, sir.

Dr. Grygier: I will try to explain. I think that the success of parolees from Quebec penitentiaries is partly due to the fact that Quebec penitentiaries contain more good risks. These good risks possibly should not have been in penitentiaries in the first place. Why are they in penitentiaries? Partly because of the failure of the probation system in Quebec. That system is only now being organized; but, of course, that is not reflected in my data.

The correctional institutions in Ontario have a relatively low rate of success. Why is that so? Are they that inefficient?

The Chairman: Are you referring to when parolees go out on parole?

Dr. Grygier: In general, whether they are on parole or not on parole. This is because Ontario has, if not the best, certainly one of the best probation systems. As a result, therefore, if the offenders are offered a chance of rehabilitation before they go into the institutions, then the institutions contain worse risks. The result, then, is a worse rate of recidivism on parole.

So one cannot really take it all in isolation. This, by the way, is only my suspicion. I cannot possibly say that this is necessarily so, but it generally happens that way.

The Chairman: If that is a sound basis, then it is fairly obviously going to happen that way.

Dr. Grygier: Yes. Of course, the situation may change because Quebec is moving ahead with probation.

Senator Thompson: Dr. Grygier, you have here an item, "lived with his wife or common law wife at the time of his conviction". Could we infer from that that, if a man has been living with his wife, she is a bad influence so far as success is concerned?

Dr. Grygier: Generally speaking, people who return to a stable environment, who have some links with the outside world when they are in penitentiary, are better risks. One might think, for instance, if any representations were made on behalf of the parolee or prospective parolee to the Parole Board and there was then a favourable decision, that perhaps the Parole Board was swayed unduly and that these are, *de facto*, bad risks; but our data would show that they are usually good risks. So, if someone has these links outside—respectable links outside, because he is not going to ask a professional criminal to make representations to the Parole Board—that is a good sign and, therefore, the chances of recidivism are less. I think the Parole Board is well aware of that.

Senator Thompson: What are the implications of the fact that the person is over 31 years of age at the time of release?

Dr. Grygier: Generally, practically all researches lead us to the conclusion that, other things being constant, at least, older offenders are better risks, whether they are or are not on parole.

Senator Thompson: But, as I understand it, the majority in penitentiary are in their early twenties.

Dr. Grygier: No, that is not so. I have recently completed another study, this time on workshops in penitentiaries, and, quite frankly, the average age is higher than is generally believed, and higher than I expected. They are in their late twenties.

Senator Thompson: For the younger group, could it also be that we do not have the community resources?

Dr. Grygier: No. It simply means that offenders from the younger group are usually either on probation or in provincial institutions. By the time they graduate to penitentiary they are already older.

Senator Thompson: With respect to these characteristics, from what the witness was telling us yesterday, I drew the inference that these types of characteristics were not being noted by the parole officers and sent up to the statistical department in Ottawa to be computed. How did you get these facts on which to base your study?

Dr. Grygier: I simply examined the files which were available to the Parole Board. I examined the relationships between the facts that I could establish on the basis of these files, and I also examined what the Parole Board did with the information. That is why I mentioned even in my brief that I came to the conclusion that the Parole Board in fact functioning at that time very effectively as a screening device.

I am still in favour of calculations, but, compared with other jurisdictions, I think that the Parole Board in Canada has been

perhaps cautious—at that time even over cautious, although it has changed the policy since—it has been selective, and, generally speaking, quite aware of the various predictors of success and failure.

The Chairman: Did these predictors turn up through their files to confirm this, or did you get this from an examination of their files? Did you have a preliminary idea that this was what they ought to be, and then you found it in the files? Which came first? Were the predictors drawn from an examination of the files, or did you have these predictors before you examined the files?

Dr. Grygier: To some extent it was a combination of both. We were looking for predictors in the files, and we already knew potential predictors from previous studies.

Senator Thompson: As far as other predictors are concerned which could be helpful in providing an understanding on which to base a consideration, do you feel that within the department now there are the research facilities to achieve such predictions?

Dr. Grygier: I do not think they are within the department, and I do not think that the Department of the Solicitor General should do the bulk of the research. They should support researchers by contract, but I think it is probably better to have independent studies made and published and subject to examination so that nothing is covered up—and there is not even the slightest suspicion that there is any desire to cover anything up.

Senator Thompson: Could I ask in which year you did this study?

Dr. Grygier: I think I completed it in 1970, but the data were from 1965. Previously I had published a study which was based on a 1960 sample.

Senator Thompson: Do you think there should be further studies such as this?

Dr. Grygier: I really do think so, especially since as policy changes, predictors change. What we call crime is not simply the behaviour of the offender. It is a combination of numerous decisions by the offender, by the complainant, by the police, and by the judge. So, at any time the policy changes the whole system is upset. I mentioned the Quebec penitentiaries. Why has parole been such a success there? Because the other part of the system is affecting what is happening on parole.

Senator Thompson: What I should like to get at, Mr. Chairman, is that the doctor suggested there should be ongoing studies. How do you get at these to see that we are making the maximum use of all the statistical material that is going into the central office of the Parole Board, or wherever it goes?

Dr. Grygier: I feel that the Department of the Solicitor General, for instance, should—and to a large extent it does already—support studies that are aimed at the solution of practical problems. But

what is rather unfortunate—and here both sides are, in a way, guilty—is that the researchers very often try to demonstrate how useful their study will be, but then, when they have completed the study, they present a mass of data without any practical conclusions or any practical suggestions.

I happen to be a researcher who is very much policy oriented. I am not at all interested in party politics, but policy is, to me an essential part of my work. I do research that is, as I say, policy oriented.

The second part of the problem lies in administration, and I do not particularly blame the Department of the Solicitor General, because in this respect all government departments and all administrators tend to be the same; they somehow have a resistance to implementing research results. There are exceptions, of course.

Is Canada really behind? I do not think for a moment that Canada is really behind in this field. On the contrary—and here I want to cite another jurisdiction although it is in Canada. Very soon after having been appointed Minister of Reform Institutions, the Honourable Allan Grossman stated that his policy was going to be based on research. I was at that time a university professor; I was not a civil servant, but I was director of research. I really can confirm that his policy was based on research. I was feeding him the data, and within a very short time he was putting these data into action. Last May he was awarded an honorary doctorate in criminology by the University of Ottawa. He has done tremendous work for research, especially for applied research. I think it is easier to do research than to have imagination and courage to implement in actual policy the results of research. But he did that. I do not think that anybody who knew about this particular honorary doctorate, whatever their political persuasions might have been, had any doubt whatever that he deserved it.

Senator Thompson: As leader of the Opposition at that time, I concur with your remarks. I think he was a real minister of reform in penal institutions. Do you have a list of research topics which you think the Parole Board—since that is what we are studying—should be implementing? And, if so, would you suggest those topics to us?

Dr. Grygier: I would mention at least two topics. One is already mentioned in my brief, and that is doing some prediction research, which I think would be particularly useful now that we have introduced another element, the more or less therapeutic element, into parole decisions. When the Parole Board was making all decisions essentially on the basis of files and was not in contact with the offenders, they appeared, according to my data, to function very effectively as a screening device, but they did not *appear* to do justice to the offenders, and the offenders felt that justice could not be done, and that the Parole Board really did not quite know—

The Chairman: This was the feeling of the offenders?

Dr. Grygier: This was the feeling of the offenders.

The members of the Parole Board work extremely hard and they travel around to see and to listen to the offenders. I am sure this is much better from the point of view of justice appearing to be done.

However, at the same time it is quite likely that their decisions now are less sound than they were before, when they were based entirely on the hard facts.

Now, how do we counteract this and enjoy the best of two worlds? I think that we should continue to do these calculations but, at the same time, we should continue to see the offenders, and more especially to announce the reasons for parole either being granted or denied.

My second point is that we should study the effect of parole supervision. We do not know what the payoff of supervision is. We can only ascertain this by experimentation, and this means assigning some offenders at random to perhaps three different types of approach—fairly intensive supervision, fairly loose, and no supervision at all—in an effort to determine how much supervision each type of offender will require. In this way we can be more rational and, in a way, more economical, and we can concentrate our efforts where they will pay off.

Senator Fergusson: I wanted to ask a question regarding another part of this subject. However, I was rather interested in pursuing some of the matters about which Senator Thompson was speaking. Dr. Grygier mentioned something about choosing three offenders—

Dr. Grygier: I was speaking about three types of offenders.

Senator Fergusson: I see, I did not understand that. Three different types altogether?

Dr. Grygier: Yes: those who need intensive supervision; those who need moderate supervision; and those who will probably do as well without supervision.

Senator Fergusson: I am afraid I did not understand what you were saying.

This committee has heard a great deal about day parole and temporary parole, and I feel we have been quite impressed by what we have heard. As a matter of fact, long before I had ever heard of this in Canada I had seen it in operation in another country and I felt it was a very good idea indeed. I am wondering, doctor, if the system you are suggesting was adopted, would day parole also be integrated into the program, or what would happen to day parole and temporary parole?

Dr. Grygier: I am certainly very much in favour of day parole. There are numerous sufficiently stable cases where, for at least a period of time, people can take advantage of the opportunity to work outside, and to be more or less on their own without control, provided they have the stable environment of the prison to which to return. I have heard the view expressed that day parole really represents a compromise between correction and punishment, and that if a person can be released for a day, then, why not parole him altogether? He only returns to the prison in order to be punished. This is not so. There is a type of day parole in the mental health service where a patient is well enough to work outside provided he can return to the hospital at the end of the day. The patient is not

stable enough to leave on his own. I am quite sure that day parole is not just punitive; it is also constructive. There are not just certain types of people who do well on day parole; but, rather, in many cases it is a very useful stage before granting full parole.

It is rather interesting that in a study completed by the Centre of Criminology in Toronto,—penitentiary inmates favoured day parole. However, at the same time they opposed mandatory parole. They do not like the idea of being on parole when they have earned their remission. They feel that if they have earned remission no controls should be imposed upon them. It is also very clear from this study that many offenders feel that the sheer passage of time which they spend in the penitentiary is paying their debt to society. I do not feel there is any more pernicious idea than that of an offender feeling that his stay in prison is paying his debt to society. He is paying nothing. Not only is he paying nothing, but he is costing the taxpayer a great deal of money. If he feels he is paying his debt to society, this means that he is not doing anything constructive but that he is busy paying his debt without any effort on his part. Later on he feels that he can enjoy the loot because he has paid his debt, and that he should not be under any handicap. He feels he should have exactly the same credit rating as everybody else, which is not practical; and, if he does not enjoy that privilege, he can begin from scratch and soon he will be paying another debt because he will have committed another offence.

Senator Fergusson: Perhaps the reason prisoners or convicts feel that way is because the feeling that they are being placed in prison to pay their debt to society has been prevalent in Canada. I admit that this is wrong.

Dr. Grygier: Yes, of course it is wrong.

The Chairman: It has been the attitude both of the general public and of the prison officials.

Dr. Grygier: Yes, and very often it has been the attitude of the judges. By the way, I do not feel that members of the Parole Board feel that way. Do they, Mr. Street?

Mr. T. G. Street, Q.C., Chairman, National Parole Board: I would say, most certainly not.

Dr. Grygier: I did not think so. However, it is certainly a widespread feeling, and I think it is a pernicious idea.

Senator Fergusson: How can we overcome this problem and educate our people?

Dr. Grygier: I feel that if we really organize our correctional system on the basis of protecting society, and not on the basis of punishment or retribution, which contains the element of paying a debt to society, this will accomplish the purpose. Retribution does mean that once this has taken place the debt is paid. The National Parole Board members do not consider retribution to be their business. If their kind of thinking is generally adopted, in my opinion society will be better off.

Senator Fergusson: It would be the same attitude as we have for a bankrupt when he settles up and starts afresh.

Dr. Grygier: Yes, but a bankrupt is not a good risk; he does not have a good credit rating. The offender, however, very often mistakenly believes that he should have the same credit rating as anyone else. Unfortunately, that is neither true nor realistic.

The Chairman: In other words, if the public were to accept the concept that all your correctional institutions—the prison, penitentiary and probation as a treatment service, such as that in mental health, for instance—are forms of treatment for asocial behaviour, we would stand a better chance of succeeding in the overall picture of protecting society than we do at present?

Dr. Grygier: I am not sure that that is so. At the same time however, our Criminal Code is a punishment code. There is no doubt about it. Our correctional system is well ahead of our Criminal Code. The Ouimet Report—which is, of course, an enlightened document—is well ahead of our Criminal Code.

Senator Fergusson: In paragraph 2, on the first page of your brief, you mention that there should be a corrections code, rather than the overlapping acts which now exist, such as the Parole Act, the Prisons and Reformatories Act and the Penitentiary Act. Your last sentence states:

Some European jurisdictions provide excellent examples of clarity and conciseness in this area and should be studied.

Could you illustrate that please?

Dr. Grygier: There certainly are specific codes concerned with and covering all areas of the execution of sanctions. Such a code, which I obtained from Poland, was introduced in 1971. It is approximately three inches by five inches in size and would not contain more than 30 pages.

The Chairman: Does that constitute their general, overall code?

Dr. Grygier: Everything: probation, parole, imprisonment—all aspects.

Senator Fergusson: Do other countries have such a code?

Dr. Grygier: At this moment I do not recall, and I do not wish to relate this to a specific country. I believe France has one. I know that some jurisdictions are at least working on such codes. Also the ordinary criminal codes have many provisions concerned with this area. For instance, practically all criminal codes in Europe contain these provisions. It is always interesting to note that the tendency of European legislation is to separate criminal codes, concerned with principles of justice and with principles of correction, from procedural matters. Therefore, to a large extent, they embody these provisions, but there are separate codes governing procedure.

Senator McGrand: Our witness has probably forgotten this, but we met about 12 years ago in Toronto. I am interested in pursuing

an investigation into certain causes of crime. I am not so concerned with letting people out of jail as with keeping them out in the first place.

Senator Thompson asked for the definition of “crime”. In my opinion, throughout history the churches and the state have decided what is sin and what is crime. You referred to the girl of 10 years of age in a training school, and inquired if everyone would consider that she had committed a crime. There were other individuals there who had stolen property, and the question arose as to how serious a crime had they committed.

I feel that there must always be motivation. Do you think that anyone would commit an offence against a person by stealing or destroying his property, endangering his body or taking his life, if the offender had been taught in early life to respect the dignity of life, which includes the limb and the property of the individual?

Dr. Grygier: I am sure the probability would be less. I am also sure that it could happen. I do remember your particular interest, senator, in sadism and cruelty. Since I have spoken so much with respect to frequently needless persecution of sexual offenders, I should mention that when a sexual offender has a sadistic streak I would regard him as very dangerous indeed. No matter what the general statistics may be with respect to the danger represented by sexual offenders, they do not lead me to the conclusion that a sadist is safe.

Senator McGrand: How would you define a sadist?

Dr. Grygier: A sexual offender who, for instance, has never committed a violent crime but who is perverted and who also has shown cruelty to animals, not necessarily to human beings. In my view, this is not based on predictions of sadism, because the frequency is too low. As a psychologist, I would not consider such an individual to be safe. I consider this to be a very important point. There are limits to the usefulness of all prediction devices. When a situation or condition is rare it must be considered separately. It will not appear in statistical tables.

Senator McGrand: In Buddhist countries there is great respect for the dignity of life, which includes people, flowers, animals and so on. Is there a tendency toward violent crime against the person or life of an individual in eastern countries such as Thailand and Burma, which follow the Buddhist faith? Are violent crimes common there?

Dr. Grygier: I do not know the crime statistics, but it is enough to look at what has been happening in southeast Asia, where millions of people are killing each other.

Senator McGrand: But it is the western world that does most of the killing.

The Chairman: We have already had one school of thought expressed here. Let us not get into an argument on that matter.

Senator McGrand: I shall keep off that subject. Some years ago, before television, comic books depicting crime became a major issue. A New York psychiatrist wrote a book called "Seduction of the Innocent". I was interested in the book and bought it. In it the author traced many gruesome murders to the crime comic book. Those murders had been carried out in exact detail according to murder-stories published in crime comic books. Many people say that crime shown on television does no harm. What is your opinion on that, having observed television over a long period of time?

Dr. Grygier: I feel that this is very much in the area of mental health rather than correction. There are some types of pathology which should be removed from the criminal justice system and put into the mental health stream. I am trying to confine myself to the criminal justice system. I have already extended myself beyond the subject of parole because I regard parole as part of the criminal justice system. There are some people who should be taken out of that stream altogether, and those you have mentioned belong in this category.

I am concerned particularly with risk. One usually thinks of the risks that the Parole Board or society take when somebody is released on parole, but one does not think enough of the risk involved in keeping a person in the penitentiary longer than necessary. That risk may be greater. If we continue calculating only the risk in releasing people, and not the risk involved in keeping people in the penitentiary, we will never have a sound policy.

Senator McGrand: That is a good point.

The Chairman: Following that up, in paragraph (c) on page 12, "Decision and Outcome: Studies in Parole Prediction", one of the attributes is 20 months or less spent in confinement preceding sentence. Would you gather from that that where we have a four-year limitation we may be doing more harm?

Dr. Grygier: There are some findings which cannot be explained adequately, because one can explain them in various ways and one is not sure which explanation is the best. There are already two very clear possible explanations. One is that if we keep a person in the penitentiary longer than necessary, he will deteriorate. If that is so, he should be released earlier. The second explanation is that he is not released earlier because he is regarded as being dangerous, in which case the opposite conclusion applies: he should be held longer when considered dangerous. Generally speaking, within the confines of the Parole Board policy, the risks taken have been good risks.

The Chairman: The length of sentence which people serve could affect that particular figure, could it not?

Dr. Grygier: Of course.

The Chairman: There is a suggestion that one of the reasons for the Quebec situation regarding parole looking so good is that many parolees should have been placed on probation in the first instance. We often run into people today who take us quietly to one side and say that if we want to solve the problem we should treat offenders

roughly and not keep them in prison so long. Is there any difference between Quebec institutions and Ontario institutions? Are Quebec institutions tougher, and are there more restrictions? Is it more unpleasant to live in a Quebec institution than in an Ontario institution?

Dr. Grygier: I have visited institutions in Quebec and Ontario, and I do not think the difference is that great.

The Chairman: So it is not a question of any difference which might exist between Quebec institutions and other Canadian institutions? That would not account for that prediction?

Dr. Grygier: No. Sentencing policies have to be different when facilities are different. I remember discussing this problem with Mr. W. B. Common, Q.C., the former Deputy Attorney General of Ontario, at a time when there were many complaints about inequality of sentence. He said, "How can we have equal sentences throughout Canada when facilities are different? Judges have to adapt sentences to existing facilities." Of course, he was right.

The Chairman: Should sentences, in your opinion and in the thinking generally of criminologists today, be determined by the crime the individual has been convicted of; or should we be more concerned at that point with the rehabilitation of the individual? In other words, should we look to the rehabilitation of the individual or the crime; or do they have to be balanced?

Dr. Grygier: They have to be balanced. In fact, this morning I was just putting the final touches to a paper which is to be published shortly concerning a new model for criminal law—a two-dimensional model, I call it—where the limits of state interference would be established according to two dimensions, one concerning the crime and the other the offender. In a way, I was thinking as a lawyer, using my background in psychology and statistics. It is a method known as factor analysis whereby you can distinguish certain dimensions along which certain phenomena can be measured. I would regard the offence as obviously important; and, therefore, I would not keep an offender incarcerated for a long period of time if he did not commit an offence of serious magnitude. Within the limits of the offence, I would look at the offender in order to determine to what degree he needs to be restrained from further crime.

The Chairman: Would this be the type of thing that would perhaps be illustrated by the fact that under British law, where you have a sexual offence, particularly against a girl under the age of 14 or 16 years, in particular, carnality which amounts to rape, there is a different set of penalties, or a lighter set of penalties, if you will, where the offender is a person under the age of 25—in other words, where the law itself divides offenders into groups as well as the crimes into groups? Is that what you have in mind?

Dr. Grygier: Not that in particular, but I am aware of this problem. You may also find that in some of our jurisdictions a younger boy can be considered an adult and can be convicted of the offence of contributing to the delinquency of a juvenile girl older than himself.

The Chairman: Yes, I know of a case where, because of the differences in the definition of an adult in the Juvenile Delinquents Act, a 16-year-old boy was convicted of contributing to the delinquency of a 17-year-old girl. This was in the Province of Alberta.

Dr. Grygier: That is precisely what I mean.

Senator Fergusson: May I ask one further question? Though it may seem impertinent of me, I must challenge a statement Dr. Grygier quoted from Mr. Common, because Dr. Grygier has so much more knowledge than I could ever hope to have of this subject. The statement by Mr. Common that I challenge was to the effect that judges' sentences might vary because of the differences in available facilities. I would take it from that that the judges must know the facilities to which they are sending people. I myself have visited many jails and penitentiaries . . .

Senator Haig: As a visitor.

Senator Fergusson: Yes. Perhaps I will have the other experience yet. As I said, I have visited many jails and penitentiaries, and I certainly understood that until recently judges seldom visited these places and, consequently, they did not know where they were sending people. I believe that has changed now, but that was the case.

Dr. Grygier: We do not seem to be in disagreement. What Mr. Common said was that there can be no equality of sentences as long as we have inequality of facilities, and with that I agree.

The Chairman: Would you explain what you mean by "inequality of facilities"? I think that is what is causing the misunderstanding.

Dr. Grygier: For instance, judges in the Province of Quebec could not put many people in probation because there was no probation service. It was inevitable, therefore, that judges in the Province of Quebec appeared punitive, whether or not they in fact were.

I agree with your statement that judges tended not to visit the facilities and, therefore, were not aware as to where they were sending people. As a matter of fact, our judges still are not trained to be judges, and in this respect there is a tremendous difference between our system and the continental European system—and I include in continental Europe the Scandinavian countries which are on a peninsula. Under those systems the judges are professional men who, after having studied law, are thoroughly trained with respect to the functions of a judge. As a result of this training, a judge is a professional prepared for his function. Our system is different in that we do not train our judges to be judges. In my opinion, what we should at least do is what the Americans are doing; that is, give judges already appointed some additional training. In this respect I can say that the Centre of Criminology, in conjunction with the department, would be interested in helping to organize special courses for judges, not to teach them what they know better than

we do, but to give them some information that they do not possess regarding, for instance, studies that either we ourselves have undertaken or of which we know and which show the efficiency or otherwise of certain sentences and the credibility or otherwise of certain witnesses. There is a great deal of scientific material relative to the function of judges, and I feel the judges should know about it. The judges are interested in this type of course. I was speaking yesterday to Judge Kendrick, the former president of the Canadian Criminology and Correction Association, and he expressed great keenness on having such courses. In other words, what I am saying is that I am not just trying to preach something that the judges do not want; the judges are quite aware of the shortcomings of the present system, and I am sure that many of them would welcome the opportunity to attend courses such as I have outlined. On the other hand, I think the criminologists could also learn a great deal from this exchange with the judges, because I feel that quite often criminologists do not realize some of the problems that judges do encounter.

Senator Flynn: This suggestion is, I think, contained in the Prévost Report on the administration of criminal justice to have the judge take some kind of course or obtain certain training. It is obvious that in some jurisdictions men with very little experience or knowledge are appointed judges.

Dr. Grygier: In this respect, again I am not surprised. The Prévost Report is a little ahead, because it was more influenced by the French system, which gives the judges very thorough training.

Senator Flynn: However, not all judges have accepted the idea with a smile, I must confess.

The Chairman: In Canada we have a situation whereby a man who is appointed a judge could have been, and very often has been, for the last 15 or 20 years limited to what would amount to what could generally be described as a corporation practice. He suddenly arrives on the bench, and for the next six months is probably detailed to the criminal courts to try criminal cases to get experience. Is this the standard situation you have seen in other places?

Dr. Grygier: I think it certainly is a standard situation.

The Chairman: In the continental system, do they use panels of judges rather than a single judge at the trial court level?

Dr. Grygier: There are different systems. A system that is becoming more and more popular in Europe is having one professional judge, who is a lawyer and is trained as a judge, and two assessors, who are generally professional people with a background in medicine, especially psychiatry, psychology, sociology and social work, and so on. They sit as a panel of three, and the professional judge can be outvoted, even on points of law, by the other two panel members who come from other professions. Apparently, this happens with great willingness on the part of the professional judge in cases in which the law is too harsh, when he cannot vote in clear disregard of the law. That is one system. There is also a system in

which there are simply three professional judges, at least in more serious cases.

The Chairman: Are there any further questions?

Senator Burchill: I think one of the most important points brought out this morning is that on the training of judges.

The Chairman: I agree. If we have no further questions, before we adjourn may I thank you very much, doctor, for your kindness and the trouble you have gone to in preparing this brief, and for your patience with us this morning?

Dr. Grygier: Thank you very much for your patience.

The Chairman: I am sure you have been of great assistance to the committee.

The committee adjourned.

APPENDIX "A"

BRIEF ON THE PAROLE SYSTEM IN CANADA
FOR THE STANDING COMMITTEE OF THE SENATE
ON LEGAL AND CONSTITUTIONAL AFFAIRS

This is in response to your open invitation of January 1972. I enclose copies of my publications containing data and argument in support of my recommendations, which are:

(1) Parole should be regarded as one part of the system of the administration of justice which is, in turn, a part of the total social system. The aim of the system of justice is defined as the protection of society, which includes the offender (see "Crime and Society", appended). It follows that parole itself should have no specific aims, only specific procedures, humane and efficient.

(2) The general principles of legal and social philosophy elaborated by the undersigned and accepted by the Canadian Committee on Corrections (cf. The Ouimet Report) lead to the conclusion that Canada needs a Corrections Code rather than a multiplication of overlapping and, at times, conflicting pieces of legislation. If so, the Parole Act, the Prisons and Reformatory Act, the Penitentiary Act, etc. should be replaced rather than amended. Some European jurisdictions provide excellent examples of clarity and conciseness in this area and should be studied.

(3) Offenders released early on parole present, presumably, less danger to society than those held in custody until the expiry of their sentences: those not paroled present more risk and in many cases need more supervision. It is recommended that the law be changed to provide mandatory supervision, irrespective of parole or remission, for all long-term prisoners, the length of such supervision generally increasing with the length of the sentence and the risk involved.

Such a system exists in Sweden; it is very different from indeterminate sentences and unlimited supervision.

(4) A decision to grant early release on parole implies a prediction that the parolee will not commit any serious offences in the period of parole and that any such risk would be offset by the value of supervision and by a reduction of the offender's danger to society in the long run. While the underlying assumption of the value of supervision appears to be sufficiently well-based to recommend changing the law as in paragraph 3 above (see "The effect of social action", appended). The implications of early release have never been fully tested by research; they need to be.

We should find out (a) whether earlier release on parole actually reduces or increases recidivism, (b) what is the pay-off (not only in financial terms) of supervision, and (c) how would this be increased—or reduced—by a wider use of private after-care agencies, volunteers, ex-offenders, etc. in all or specific cases.

(5) Accurate prediction of recidivism (assessment of the *probability* of return to crime, irrespective of the *gravity* of the new offence) is only part of the total problem; but at least here some data are available. Research carried out by the undersigned and his

co-workers (see "Decision and outcome", appended) indicates that at the time of the study the National Parole Board functioned very effectively as a screening device, and compared favourably with similar bodies in foreign jurisdictions.

(6) Good judgment is impossible without adequate information. The adequacy of available information can be assessed mathematically, in terms of its relevance to the prediction of recidivism. The relevant information could then form the basis for a classification of offenders in terms of their potential danger to society. Such a classification of all offenders is both desirable and methodologically necessary to help in meaningful decision-making concerning their treatment. Parole is just one stage in the treatment and rehabilitation process, and no rational decisions concerning parole can be made without information on its alternatives. Abroad, the use of prediction methodology in supplementing subjective judgment in parole and analogous decisions has recently increased. Canada happens to have one of the few centres in the world (at the University of Ottawa) with a team of specialists in prediction methodology, including the originator of one technique*. Another expert, who invented a useful prediction technique while at the British Home Office**, is also now in Canada. This country could avail itself of local experts and use ideas and techniques which they have contributed to correctional advances abroad.

(7) Aided by a prediction table, competent parole analysts should be able to estimate the chances of recidivism within minutes. Other tables could be devised, as suggested in paragraph 6, that would indicate the gravity of the offence which may be repeated. All cases could then be divided into three categories, presenting (a) too much risk to be paroled, (b) so little risk that they may be released without much study or supervision, (c) borderline cases, requiring careful consideration of individual factors by the Parole Board. The Parole Board would consider specific factors in all cases, but should be able to concentrate on category (c), thus saving themselves labour and money in cases (a) and (b).

*T. Grygier, "Further development of Paired Attributes Analysis" (*Canada. J. Corr.*, 1971, 13, 109) and "Paired Attributes Techniques" (to appear).

A monograph on the use of prediction techniques as a basis for social defence policy has been prepared by the under-signed at the request of the United Nations Organization. It is being edited and translated for publication in the three U.N. official languages.

**See Peter Macnaughton-Smith, "The classification of individuals by the possession of attributes associated with a criterion" (*Biometrika*, 1963, 19, 364-366).

(8) Whether supplemented by prediction tables or not, decision-making can be improved by feed-back. This principle applies to all steps in the administration of justice and not only to parole. It is suggested that the whole decision-making process could be improved by a series of workshops bringing together decision-makers in the administration of justice and corrections with university personnel with knowledge of relevant research data. The Centre of Criminology, University of Ottawa, is prepared to help in the organization of such workshops and to provide lecturers and discussion group leaders.

It can be seen from the foregoing that this Brief is limited to recommendations based on general principles of philosophy and science, and on available research methods and data. The need for research and for more use made of research is stressed. This does not extend, however, to the assessment of "the success or failure of the parole system" (Item XIV of your Invitation). What can be established, with respect, are only ways and means of improving the

effectiveness of some of its constituent parts, e.g. of selection and supervision; the global assessment of the parole system is, at the present state of knowledge, an impossible task. Moreover, as stated at the outset, parole should be treated as merely part of the total social system, and there are so far no scientific methods for assessing a society's success or failure. "Quality of life" may, at least, be one criterion; this may also be the criterion of successful parole, but we lack the measuring rods to make such a definition operational.

I should be glad to answer orally any questions posed by the Standing Committee.

T. Grygier
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APPENDIX "B"

Decision and Outcome:
Studies in Parole Prediction

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This paper presents a summary of the results of four separate studies and their implications for social policy. They were undertaken with three distinct but interrelated purposes in mind:

1. To confirm and extend the results of an earlier parole prediction study.
2. To assess the relationship of parole selection to parole outcome.
3. To discover the characteristics of good candidates for parole.

A full technical report on these studies (155 pages) is available on request.

Study I

1) The method of "predictive attribute analysis" used in a previous study of 200 parolees from penitentiaries in *Ontario*^{1, 6} was successfully cross-validated when applied to an all-Canadian (*Canada*) sample (N = 256). With the exception stated below, the same attributes that predicted success on parole in Ontario in 1964 still predicted successfully when the prediction table was applied to *Canada* in 1968. The new sample included parolees from Ontario, but these were released several years later than the subjects of the *Ontario* sample.

Whenever the words "Ontario", "Canada", "Montreal" and "Quebec (Canada)" appear in italics, they refer to specific samples of 200 parolees from Ontario, 256 parolees from Canada, 300 parole applicants from Montreal or to a sub-sample of 88 parolees from Quebec who were also included in the *Canada* sample.

2) The 1964 Ontario finding that "intensive casework supervision" by a private agency was more effective for a specific risk category than "other supervision" as defined in the Ontario Study was not true of Canadian parolees as a whole. The situation in Ontario in 1968 was still essentially the same and it was probably similar in three of the five other provinces for which adequate data were available, but it was reversed in two provinces (New Brunswick and Quebec); even when the relatively large *Quebec* sample was excluded, the rest failed to reach statistical significance.

*Assisted by Yves Léveillé, Department of Criminology, University of Montreal, and Jean Blanchard, Department of Criminology, University of Ottawa.

3) It follows that predicting success on parole by the method first applied to an Ontario sample is possible on a wider scale and can be recommended; but it would be impossible to establish a national policy with regard to the type of supervision necessary for various categories of offenders, since recidivism among offenders supervised by private and public agencies differs from region to region. This finding is important in view of the new system of supervision envisaged by the amendment to the Parole Act subsequent to Bill C-150.

Since it would be impractical to supervise all offenders released on parole and all those subject to mandatory supervision, we must know a) who needs intensive supervision, and b) who can give it. Only a series of studies can answer these questions. Such studies are necessary if Canada is to manage judiciously its limited financial and, especially, human resources. In order to provide definitive answers in terms of causation (and all statements of effectiveness of treatment or selection imply causation) these studies would have to be conducted within the experimental frame-work, with random allocation of parolees to more intensive or less intensive supervision.

Study II

a) This study introduced additional predictors of parole success to those used in the original Ontario study. In all these steps the same method, predictive attribute analysis, was used. As expected on the basis of the principles of psychological test construction, increasing the number of predictors increased the accuracy of predictions. In other words, the number of misclassifications (predicting success on parole in cases of failure or vice versa) was reduced. This finding was contrary to current methodology of criminological research, which generally aims at reducing the number of predictors to as few as three or four.

When the Canadian sample was analyzed by the prediction table previously developed for Ontario (13 attributes), the percentage of misclassifications was 35.2.

With five more attributes added on the basis of clinical judgment and previous criminological findings this percentage was reduced to 27.3. Similar gains were recorded when new significant attributes were added and when all clinically and statistically promising attributes were used.

When all thirty-seven attributes that the computer program could handle were included (only the five least promising attributes being dropped from the total pool of available information) misclassification was finally reduced to 21.9 per cent. In this analysis some of the attributes which showed an indirect relationship with the criterion (success on parole) gained predictive power in combination with other attributes.

2) Predictive attribute analysis, especially if it is based on a large number of attributes, is a promising technique. A simplified form, recently developed for use in sentencing^{2,3}, could easily be adapted, and any parole analyst should be able to fill in the form and classify the amount of risk within minutes. There are only two important conditions.

a) The quality of the records should be improved by standardization.

b) A new study, based on the present results and possibly incorporating a few further ideas, should be undertaken on the total population *eligible* for parole, rather than on those released on parole.

If a device to predict likelihood of parole success or failure is to serve as a guide to the Board, it must be independent of its policy. At the moment we can only tell what risk is involved *after* a favourable decision of the Board has been made. In that sense our method—which was restricted by circumstances beyond our control and was the only one possible under the research contract—almost forced us to single out the types of parolees who are at present released and should be denied parole, instead of finding out which parolees, at present denied parole, should be released earlier. Fortunately, some indirect evidence in this respect was available to us and is considered in Study III, but it must be admitted that no indirect evidence can ever be regarded as entirely satisfactory.

Study III

1) This study is aimed at relating parole decisions to parole outcome in order to provide scientific data for a possible re-examination of National Parole Board policy. The first step was therefore, an analysis of parole decisions. Such an analysis necessarily led to a prediction study, since we can never be sure whether we understand behaviour unless we can predict it.

2) When the methodology used in Studies I and II was applied to the decisions of the National Parole Board, it was found that these decisions (parole granted or parole denied) could be predicted by the computer with only 3 per cent error. The best predictors of National Parole Board decisions were found to be the submissions received by the Board from the regional representatives, followed, in order of predictive power, by community investigation, report from the institution, and the type of institution (maximum of other).

3) This close agreement between the National Parole Board's decisions and the submissions from the field raises two sets of questions:

a) Are the Board's decisions determined by the recommendations received? Or, are the recommendations themselves determined by the Board's policy? Or, yet another possibility, are

both types of decision based on purely objective data? We found that indirectly the Board's decisions could also be predicted from objective data, with misclassification of only 15.7 per cent. If so, both the submissions and the final decisions are likely to be determined primarily by objective data rather than subjective impressions. Whether the decisions—and the data—are valid or not is an entirely different question, to which a tentative answer is given later in this section.

b) Even if the Board is right in accepting submissions and classifications as valid, is the best use being made of the Board's potential if the reports received are endorsed in all but three per cent of the cases? Is this degree of agreement unusual? The answer seems to be that most Boards operate this way, and two very similar studies received recently by the Centre of Criminology (private communication) show that the final decisions about release in another jurisdiction agree with the submissions without any exceptions. Similarly, Supreme Courts usually approve the decisions of the lower courts, but this does not mean that we should have no Supreme Court of Canada: on the contrary, one might say that the Supreme Court determines the policy and the lower courts operate so as not to have their decisions reversed. The three per cent disagreement may, in fact, represent a safety check—a demonstration that all applications for parole are carefully reviewed by the Board and that the report of the local man, whom the applicant may regard as most open to bias, is not the final arbiter.

It is probably nearest the truth to say that the National Parole Board and the regional representatives mutually influence each other's views and the extent of the ensuing agreement represents the final product of a highly complex process.

(4) Some details of Study III are given in Appendix A. Data in the Montreal column are drawn from the study of National Parole Board's decisions on a sample from penitentiaries in the Montreal area (N=300). Data in the Canada column are drawn from an all-Canadian sample (including Quebec) of parolees followed up until the completion of parole, provided this was within three years of release (N=256). A preliminary analysis of these samples indicated that the "parole granted" sub-sample of *Montreal* and the *Canada* sample are comparable, and that the National Parole Board applied the same consistent policy to Montreal as to other regions of the country. A "+" sign in either of the columns shows that an attribute is positively and significantly related to the criterion (the granting of parole in the *Montreal* sample or success on parole in the *Canada* sample). A "-" sign would indicate a negative correlation. A "O" sign indicates no statistically significant relationship with the criterion. "NA" means that the information was not available in the files or not analyzed in the study.

It is apparent that if, in a group of parolees, an attribute is associated positively (+) with success, it should be favoured, other conditions being equal, by the Parole Board. If it were not so favoured, we should have O+ combination in Appendix A, but in fact no such cases occur.

If the Parole Board favours an attribute which is not associated with success on parole in our sample of parolees (+O combination), this does not necessarily indicate either that the Board's policy is

wrong, or that the attribute is not associated with success on parole in the prison population as a whole. On the contrary, it is likely that the Board is right in granting parole to most applicants possessing this particular attribute, but by this very selection the attribute becomes virtually a constant in the sample of parolees and no further significant association with the criterion is possible. Any measure of association reflects a relationship between two characteristics, *both* of which vary in intensity or in their presence or absence. By definition, a *constant* does not vary and so no association (correlation) with it is possible. For instance, most applicants receiving favourable recommendations from regional representatives are paroled, and most applicants lacking such recommendations are not. Our data indicate (as common sense would in any case suggest) that this is as it should be, but the result is that in our sample the proportion of parolees lacking a favourable recommendation from a regional representative is too low for the association between such recommendation and success on parole to show up in the statistical tests. Since theoretically this combination could also mean that the Board gives weight to an attribute that in fact has no relationship to success on parole, the interpretations put forward above should be checked; but this could only be done by considering the wider population of all applicants, or even all prisoners, rather than simply all parolees.

If an attribute is favoured by the Parole Board and yet remains significantly and positively associated with success on parole, it may well be that more weight should be given to it in parole decisions. In that case ($++$ combination) it appears that the present parole policy should be strengthened rather than radically changed.

Combination 00 would indicate that the attribute is irrelevant to both parole decisions and success on parole. The number of such attributes is almost infinite, so none are reported here, although some of these negative data are most enlightening.

Other hypothetical combinations are $-+$ and $+ -$, which would indicate that the Board is either prejudiced against an attribute or favours it unduly. The absence of these combinations must be seen as an indication of the Board's success, and means that the system works well *if paroling good risks and detaining poor ones is the aim*. We shall return to this point later.

5) The first ten attributes listed in Appendix A are considered by the Board, but are possibly not given sufficient weight ($++$ combination). The following 11 attributes in Appendix A ($+O$ combination) are favoured by the Board and there is no evidence that this policy ought to change: The next two attributes ($+NA$ combination) are considered by the Board, but there was no reliable information about them in the *Canada* study. The following eight attributes ($NA+O$ combination) might again be given more weight by the Board than they are at present. The data were not recorded in the Montreal study⁴, but they are available in the files and could be considered by the Board.

Eventually, continuous flow analysis could be used in order to rationalize parole decisions to the full extent, but at present we have only rough scales that can show us the way the balance lies. Recent studies, especially at the Home Office Research Unit in London and the Centre of Criminology in Ottawa, show that weights are

generally unreliable, which limits their utility; in the long run simpler prediction models are just as effective.

6) There is one flaw in this generally satisfactory picture of National Parole Board policy. As in most other jurisdictions, sexual offenders seem to be detained in prison longer than the risk to the community warrants. The data are presented in Appendix B, not reproduced here but available on request. A change of policy in favour of sex offenders appears to be indicated, but before such a radical step is taken one must consider that association of sexual perversion with violence may carry special risks both in terms of gravity of the offence and probability of recidivism. A special study of sexual offenders, both paroled and denied parole, is required.

7) Appendix C, also available on request, lists the ten best predictors, i.e., those attributes associated with success on parole but possibly not sufficiently favoured—or even considered—by the Board. "Release from a Quebec Penitentiary" tops this list, which suggests that more offenders should be paroled in this region.

There are several *possible* explanations of this finding:

- a) Quebec courts tend to send a greater proportion of first offenders to penitentiaries and, in general, to sentence them to longer terms: if so penitentiaries receive many offenders who would be on probation or receive shorter terms of imprisonment in other regions, and who present a lesser risk from the start. If this is so, it still follows that more offenders should be paroled.
- b) Quebec offenders are not necessarily recidivists, but their offences are more serious: if so, Quebec courts are right and it may be risky to change the present parole policy; after all, danger to society is represented not only by the likelihood of recidivism but also by the gravity of the offence that might be repeated.
- c) Quebec penitentiaries have an effective treatment program: even so, shorter treatment may be equally beneficial, and early parole may be indicated.
- d) Quebec penitentiaries do not treat, but they do deter: the result would be the same as in c).
- e) Parole supervision in Quebec is more effective: if so, it should start as soon as possible.
- f) Police work is less effective in apprehending recidivists and the "success on parole" figures give a false impression: if so, there is no basis for policy change.

Some further clarification on the actual situation in Quebec—i.e. in comparative studies—is required to interpret this finding meaningfully.

Study IV

1) A predictive study of success on probation^{2,3}, carried out at the Centre of Criminology, University of Ottawa, indicates that predictive attribute analysis, however promising it may appear (and indeed was in Studies I, II and III) is relatively unstable. In other words, it loses its predictive power when applied to successive

samples. Other predictive techniques are laborious and not necessarily more effective. The most stable technique, and the safest in its application to small samples, proved to be the simplest. The "simple summation" method is more than sixty years old and has been largely abandoned in favour of more sophisticated techniques, but its virtues have been recently confirmed both at the Ottawa Centre of Criminology and the Home Office Research Unit in England (private communication). This method was tried again in Study IV and yielded a very high validity coefficient of .45. This meant misclassification of twenty-seven per cent when applied to a fifty per cent base rate sample (i.e. a group in which fifty per cent succeeded and fifty per cent failed), as compared with a still better result of twenty-two per cent misclassification by predictive attribute analysis.

2) When applied to a typical sample of Canadian parolees (eighty per cent success) rather than to a sample with an artificially inflated (fifty per cent) failure rate, a properly applied prediction technique would gain in accuracy. The probation study referred to above indicates that the gain would be considerably more for the simple summation method than in the case of predictive attribute analysis.

3) The simple summation method could be tried again on the total population of subjects eligible for parole, or at least on those applying for parole. It is certainly capable of improvement. Since it has some advantages and some disadvantages when compared with predictive attribute analysis, it may be best to try a new technique recently devised by the senior author in order to benefit from the strengths of both techniques while avoiding their weaknesses. The new method, labelled "paired attributes' analysis", can also combine non-linear second order interactions with linear regression analysis. Once the information is extracted from the files and coded, labour and computer time are relatively insignificant. What is then required is mainly logic and skill.

4) The main purpose of such a study be not so much to reduce the present amount of risk as to reduce the work of the National Parole Board and its agents by pin-pointing the type of case that should be paroled only after careful study (and probably under strict supervision) and differentiating such cases from a substantial group that involve little risk even without supervision. Dates available so far confirm that, at least in the period under study, the operation of the Board did efficiently distinguish good from poor risks and erred, on the whole, on the side of caution.

Other Findings

1) In addition to lack of uniformity in the existing information, essential data are missing in many files. This is particularly important in view of the repeated finding, first recorded by Mannheim and Wilkins⁵, that missing items of information have a tendency to indicate recidivism. Appendix D lists important attributes that frequently failed to be recorded as either present or absent.

2) A new "socio-legal" classification of offences was developed by the senior author, with the assistance of Albert Elmer, Hugh Brownhill and James Fahie, all former Royal Canadian Mounted

Police officers who joined the Centre of Criminology, University of Ottawa, on their retirement from police service. It was based on legal, social, psychological and statistical data, and is consistent with the present system of criminal records maintained by the Royal Canadian Mounted Police. Its reliability, when checked in the course of another study being conducted under contract to the Ontario Department of Correctional Services, proved to be highly satisfactory. It appears that the new classification is simple, meaningful, reliable, and capable of contributing to:

- a) a significant improvement in the present reporting of criminal statistics;
- b) inter-provincial and inter-national comparative studies involving criminal statistics; and
- c) prediction techniques now in use.

Conclusions

Although the project was sponsored by a research contract with the Solicitor General of Canada and conducted by a team, the views expressed in this paper do not necessarily represent the views of the Solicitor General of Canada, and the conclusions do not necessarily represent a consensus of the three co-authors. They are personal interpretations of the results by the "senior author".

1) The predictive devices used in the present group of studies are sufficiently reliable and valid to warrant further development on a different sample.

2) The National Parole Board, helped by regional representatives and their agents, is an excellent screening device for eliminating poor risks from parole, but it is probable that not enough risks were paroled in the period under study. It is understood that since that time the National Parole Board has been able to release more offenders under supervision; this change finds full support in our data.

3) Consequently, the main function of any predictive device would be to pin-point borderline cases, that should be paroled only after careful study, and thus to save the labour involved in the study of applicants who present (a) too much risk to be paroled, or (b) so little risk that they may be released almost without any supervision. Aided by a prediction table, any parole analyst should be able to estimate the amount of risk (in terms of the chances of recidivism) within minutes. It would still be the task of the Board to consider individual factors and, especially, the gravity of the offence which may be repeated.

4) The present study suffered from the obvious limitation that it was based mainly on offenders released on parole, and no information on the subsequent histories of offenders released without parole was available. Some applicants denied parole may present little risk and should be released earlier, but to identify them we need a study based on the total population of potential parolees. Our main concern should surely be the large number of applicants still denied parole rather than the small number that are being paroled at present.

5) An attempt to generalize from the Ontario study^{1 6} with regard to the effectiveness of intensive supervision was not successful. The situation varies from region to region. Since it would be impractical to supervise all offenders released on parole and all those subject to mandatory supervision, we need a series of studies in order to find out (a) who needs intensive supervision, and (b) who can give it.

6) To take this research further would require an experimental framework, with random allocation of subjects to different levels of supervision. This will be necessary if we are to find out (a) whether earlier release on parole actually increases or reduces recidivism, and (b) what is the actual pay-off of supervision.

7) Despite the limitations stated above, this research leads to a tentative description of some attributes associated with success on parole.

It appears that it would be advisable to parole more applicants with the following attributes:

- a) Released from a Quebec penitentiary.
- b) No aliases on R.C.M.P. record.
- c) Twenty months or less spent in confinement preceding sentence.
- d) Obtained maximum possible remission.
- e) Lived with wife or common-law wife at the time of last conviction.
- f) Over 31 at time of release.
- g) Present sentence exclusively or mainly for a non-property offence.
- h) Community investigation requested and favourable.
- i) No reference to alcohol problem in the file.
- j) Not more than two previous convictions.
- k) Custodial classification minimum or medium.
- l) Worked for at least three consecutive months at any time.
- m) Some outside representation on behalf of the applicant has been made to the Board.
- n) Over 22 at time of first sentence on R.C.M.P. record.
- o) No history of escapes or escape attempts.
- p) No unfavourable police report.

The first ten attributes (a-j) contribute most to prediction of success on parole and are listed in order of importance. For the others no reliable order of importance could be established.

8) Information on some of these attributes is often missing in the files. Other promising attributes are also frequently left unrecorded and could not even be properly examined in the present study. A full list of items of information having predictive value according to this or other relevant studies and yet frequently missing in the records is given in Appendix D.

9) The close agreement between the decisions of the National Parole Board and the submissions received from the field suggest that the majority of parole decisions could be reached locally under the aegis of the divisions of the National Parole Board, as provided in the 1969 amendment to the Parole Act. This would permit announcing the decisions to the applicant and explaining it without unnecessary delay, and so reduce both human suffering and cost, while increasing the applicant's insight and treatment potential.

Since the agreement between the Board's decisions and the submissions is not perfect, it would be advisable to study in depth the small number of cases of apparent disagreement.

10) The policy of the National Parole Board appears to be, and the assumptions implicit in the project certainly are, that offenders representing a lesser degree of risk should be paroled and those who are still dangerous should be detained. Unfortunately, in the long run this very policy is questionable. The law as it stands imposes supervision on parolees who are carefully selected as presenting little danger to society; but those inmates who represent a serious risk and are, therefore, denied parole or do not even apply, spend a little longer in custody but then may have no supervision at all after release. It is obvious that high risks require more and not less supervision; very high risks require custody, since they tend to return to crime with or without supervision.

The 1969 amendment to the Parole Act makes a step in the right direction, since it imposes supervision on some inmates released from imprisonment without parole: but still only those whose remission exceeds sixty days. Thus some of the most difficult offenders, who did not earn sufficient remission, will still leave the prison without supervision.

It is recommended here that the law be changed, to provide a mandatory parole of all long-term prisoners, analogous to the provisions of the Criminal Code of Sweden, 1965, and ensuring gradual re-adjustment of these offenders in the community under supervision.

Following this change, it would still be possible to parole more good risks earlier, with a minimum of supervision, and to concentrate the available manpower on the supervision of offenders who, as poor risks, are at present not being paroled at all but are simply being released at the end of their sentence.

Risk can never be entirely eliminated, but it is one function of criminological research to calculate it as precisely as possible and to show how it can be reduced.

Appendix A

Comparison of Significant Chi-Squares in *Montreal* and *Canada*

Symbols

+ = Significant at $P < .05$

0 = Not significant

NA = Not available

Identification #s <i>Montreal Canada</i>		Attributes	Chi-Square <i>Montreal Canada</i>	
38a	34	Community investigation requested and favourable	+	+
28	7	Fewer than three previous convictions	+	+
21	8	Twenty months or less incarcerated preceding present sentence	+	+
19	16	Custodial classification minimum or medium	+	+
11	25	Worked for at least three consecutive months at any time	+	+
39	27	Some outside representation has been made to the Board on behalf of the inmate	+	+
1	14	Over 22 at time of first sentence on R.C.M.P. record	+	+
20	19	No history of escapes or escape attempts	+	+
34	37	Police report favourable, indifferent or irrelevant	+	+
9	18	Was married or lived common law at time of conviction for present offence	+	+
36	35	Favourable recommendation by regional representative	+	0
38	36	Favourable recommendation by custodian or his representative(s)	+	0
22	24	Never had parole of any type before	+	0
39	29	Representation by family and/or Member of Parliament and/or former employer	+	0
40	26	Has definite job to go to after release	+	0
45	30	No record of any parole revocation or forfeiture	+	0
15	31	No evidence of ever having appeared before juvenile court	+	0
41	33	Has a definite place to live after release	+	0
16	32	No evidence of ever having been in a training school	+	0
6	20	Completed Grade 8	+	0
4	9	Over 28 years of age at present sentence	+	0
23	-	Has not been refused parole for a previous offence	+	NA
13	-	Has lived in one place for at least two years before present conviction	+	NA
	47	Fewer than five offences when previous and present combined	NA	+
-	43	Released from a Quebec penitentiary	NA	+
-	17	No aliases on R.C.M.P. record	NA	+
-	46	No more than two different kinds of offences, previous and present combined (socio-legal categories)	NA	+
-	50	Obained maximum possible remission	NA	+

Appendix A (cont'd)

—	38	Present conviction bringing maximum sentence was for a non-property offence (socio-legal categories 2-P and 3-S)	NA	+
—	48	This has been his first incarceration	NA	+
—	28	Representation made by two or more different sources	NA	+

Appendix D

Information Frequently Left Unrecorded

Attribute #	Data
19	Evidence of absence of escapes or escape attempts
25	Employment history (length of time in a job)
31	Evidence of never having appeared before juvenile court
32	Evidence of never having been in a training school
34	Evidence of community investigation (request and outcome)
36	Recommendation of custodian (or his representative(s))
37	Police report
39	Institutional conduct report
40	Institutional work report
53	Evidence of contact with a psychiatrist during present stay in the penitentiary
54	Evidence of contact with a psychologist during present stay in the penitentiary

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 6

WEDNESDAY, APRIL 26, 1972

THURSDAY, APRIL 27, 1972

Complete Proceedings on Bill C-78

intituled:

“An Act respecting the use of the expression
‘Parliament Hill’ ”

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

Argue	Laird
Buckwold	Lang
Burchill	Langlois
Choquette	Lapointe
Croll	Macdonald
Eudes	*Martin
Everett	McGrand
Fergusson	Prowse
*Flynn	Quart
Fournier (<i>de Lanaudière</i>)	Sullivan
Goldenberg	Thompson
Gouin	Walker
Haig	White
Hastings	Williams
Hayden	Yuzyk—30.

**Ex Officio Members*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 29, 1972:

A Message was brought from the House of Commons by their Clerk with a Bill C-78, intituled: "An Act respecting the use of the expression 'Parliament Hill'", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Forsey, that the Bill be read the second time now.

After debate,

The Honourable Senator Flynn, P.C., moved, seconded by the Honourable Senator Choquette, that further debate on the motion be adjourned until later this day.

The question being put on the motion, it was—
Resolved in the affirmative.

Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Forsey, for the second reading of the Bill C-68, intituled: "An Act respecting the use of the expression 'Parliament Hill'",
“.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Wednesday, April 26, 1972.

(9)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 4.15 p.m. in Room 356-S.

Present: The Honourable Senators Prowse (*Chairman*), Argue, Buckwold, Choquette, Eudes, Fergusson, Flynn, Goldenberg, Haig, Laird, Lapointe and Quart. (12)

The Committee proceeded to the examination of Bill C-78 intituled "An Act respecting the use of the expression 'Parliament Hill'".

After discussion of proposed amendments by Senators Goldenberg, Flynn and Buckwold, it was agreed that the Committee should adjourn to its next meeting to allow Senator Goldenberg the opportunity to review and combine the proposed amendments.

At 4.35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Thursday, April 27, 1972.

(10)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m. in Room 356-S.

Present: The Honourable Senators Prowse (*Chairman*), Buckwold, Burchill, Eudes, Fergusson, Flynn, Goldenberg, Haig, Laird, Lapointe, McGrand, Quart, Thompson and White. (14)

The Committee proceeded to the examination of Bill C-78, intituled: "An Act respecting the use of the expression Parliament Hill".

On Motion of the Honourable Senator Goldenberg it was *Resolved* that the said Bill be reported with the following amendments:

1. *Page 1, line 9:* After the word "location" insert the words "in the National Capital Region".

2. *Page 1:* Strike out line 17 and substitute therefor the following:

"establishment providing services."

At 10.10 a.m. the Committee adjourned.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, April 27, 1972.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-78, intituled: "An Act respecting the use of the expression 'Parliament Hill'", has in obedience to the order of reference of March 29, 1972, examined the said Bill and now reports the same with the following amendments:

1. *Page 1, line 9:* After the word "location" insert the words "in the National Capital Region".
2. *Page 1:* Strike out line 17 and substitute therefor the following:

"establishment providing services."

Respectfully submitted.

J. Harper Prowse,
Chairman.

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, April 26, 1972

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-78, respecting the use of the expression "Parliament Hill", met this day at 4 p.m. to give consideration to the bill.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill C-78 which was referred to this committee after second reading. Senator Flynn, without quarreling with the intention of the bill, pointed out that we may have a conflict with regard to some of the provincial capitals, in particular the Province of Quebec where their provincial legislature is described as Parliament Hill". That covers your complaint, does it not, Senator Flynn?

Senator Flynn: Yes, it does. I might just add that there was a reply, given by Senator Forsey, I guess, indicating that the BNA Act uses the word "parliament" to describe the federal Parliament and the word "legislature" to describe the legislative body of a province. But I do not think this is the point. I think the fact that the BNA Act uses these words does not change the meaning of the words as you find them in any dictionary.

The Chairman: I know that in my province everyone talks about "Parliament Hill" in Edmonton, and it means the same as it does here except for the fact that ours is in Edmonton.

Senator Goldenberg has given this matter considerable thought and, if it is agreeable to honourable senators, he has an amendment to suggest to the committee.

Senator Goldenberg: Mr. Chairman, I think we can meet Senator Flynn's objection and, at the same time, comply with the intentions of the sponsors of this bill by adding after the word "combination" at the end of paragraph 1 the words "in the National Capital Region", so that the paragraph will now read:

Notwithstanding anything contained in any Act of Parliament or regulation thereunder, no person shall use the words "Parliament Hill" in combination in the National Capital Region

Then the letters (a), (b) and (c) will stand as they are. "The National Capital Region" is defined in the National Capital Act of 1958, chapter 37, and it will be found in the Revised Statutes under the enumeration N-3.

Senator Flynn: Yes, there is no doubt that meets my point. However, I merely wish to point out that it decreases the effect of the bill, especially as far as paragraphs (b) and (c)

are concerned, in that you will be able to identify any goods, merchandise, wares or articles for commercial use or sale by using the words "Parliament Hill" outside of this region of the National Capital Commission. In this way, I feel it weakens the effect of the bill. If the sponsor of the bill, or anyone else for that matter, is satisfied with this amendment, I have no quarrel with it. It meets my objection, but I think it does take away much of the effect of the bill.

The Chairman: Yes, it does, except that it takes it out of the area of conflict of interest or misunderstanding.

Senator Flynn: Yes, it does, but it weakens the effect of the bill.

The Chairman: I am aware of that.

Senator Goldenberg: I would have no objection if Senator Flynn has any other suggestion he wishes to make.

Senator Flynn: As you may remember, the suggestion I made was that this act is not meant to apply to a site occupied by a legislature or something like that. I read a proposed amendment in the house which would leave the effect of the bill as it is.

The Chairman: Your amendment would be added to paragraph (a)?

Senator Flynn: Yes. My amendment reads:

Nothing in paragraph (a) of subsection (1) of this section shall be deemed to prohibit the use of the expression "Parliament Hill" where it is currently in use as the description of the premises occupied by the legislature of any province.

That would meet the point. If I am correct, I think this is used in the Quebec Statutes. I think I should mention Chapter 83 of 13-14 Elizabeth II, 1965, Statutes of Quebec, where in section 6 there is a description in Schedule 1 entitled "Parliament Hill".

That portion of the territory of the city of Quebec bounded on the northwest by the summit of Sainte-Geneviève hill, on the northeast by the fortification wall of the Department of National Defence, on the southeast by the summit of Cape Diamond and on the southwest by a line in the centre of de Salaberry avenue from the summit of Sainte-Geneviève hill to the summit of Cape Diamond.

So they have used the words "Parliament Hill" or in French "Colline Parlementaire" or "Colline du Parlement," which is the equivalent.

As I have indicated, I am prepared to accept your amendment because it does meet my objection. However, at the same time, it weakens the effect of the bill, whereas the amendment which I suggested in the house respects this description and the use of these words contained in the Quebec Statutes. I think that Alberta and Quebec are the only two sites which use the term "Parliament Hill," outside of Ottawa, of course.

The Chairman: I am not sure that it is formally set out and described as such in the Province of Alberta; I think it is just used colloquially.

Senator Flynn: In the Province of Quebec it has been used for a long time.

The Chairman: Senator Flynn, your observation certainly makes it clear as far as this particular question is concerned. However, as far as paragraphs (b) and (c) are concerned it seems to me there is a possibility that we may be getting into property and civil rights.

Senator Flynn: It may be.

The Chairman: If we follow Senator Goldenberg's suggestion, while we may weaken the effect of the bill to some extent, we still leave ourselves in a position where we will have no quarrel as to our right to enforce it.

Senator Flynn: That objection occurred to me when I read the bill, but I thought that as far as paragraphs (b) and (c) are concerned they are commercial matters within the ambit of the federal powers.

The Chairman: It would probably come under copyright and trade marks.

Senator Flynn: That is correct.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Actually I would regard it as warrantable under the criminal law.

Senator Flynn: Or commercial.

Mr. Hopkins: And in accordance with either amendment.

Senator Argue: Has any question been raised by the law officers of the Crown questioning in any way the power of the federal Parliament to prohibit the use of the words "Parliament Hill" in relation to goods, merchandise, wares or articles for commercial use?

The Chairman: Not to my knowledge.

Senator Goldenberg: We have to assume that the bill was submitted to them.

Senator Argue: That is correct, and we have to assume that there were no objections.

Senator Flynn: Usually in the case of private initiative, because this is a private member's bill, it is submitted to the counsel of the house, as it is in our case. Mr. Hopkins always gives an opinion on the legality of a bill introduced by a private member.

Mr. Hopkins: That is correct.

Senator Flynn: I suppose it has been done in the other place.

Mr. Hopkins: The Department of Justice does not assume responsibility for legislation of private members.

Senator Argue: My feeling is that we should not water it down any more than we must. If it now prohibits the use of the name "Parliament Hill" in relation to goods, merchandise, wares or articles and has passed the House of Commons unanimously, and there has been no objection that we know of raised by any law officers of the Crown, we should accept that part of it and pass it. We should meet the objection of Senator Flynn by accepting his amendment or something very close to it, which would make it clear that in no way do we wish to affect the use of the words "Parliament Hill" by any of the legislatures in Canada. I would personally prefer Senator Flynn's suggested amendment, because it leaves the bill in a stronger form.

Mr. Hopkins: Senator Flynn, would you add that as clause 2?

Senator Flynn: I would add as sub-clause 2 of clause 1 the following:

Nothing in paragraph (a) of sub-clause 1 of this clause shall be deemed to prohibit the use of the expression "Parliament Hill" where it is currently in use as the description of the premises occupied by the legislature of any province.

In other words, we say that if it is desired to term the site of the Quebec Legislature "Parliament Hill," it is their business.

The Chairman: Without involving others.

Senator Flynn: Yes.

Senator Eudes: This amendment is wider than that of Senator Goldenberg.

Mr. Hopkins: It amends the present legislation, yes.

Senator Flynn: But it does not weaken the effect of the bill.

Senator Eudes: Yes, it permits use of the words in other places.

Senator Flynn: But only for the site of a legislature.

Senator Goldenberg: Of course, Senator Flynn's amendment restricts the use of "Parliament Hill" to where it is currently in use.

Senator Flynn: Yes.

Senator Goldenberg: So that no other province could use the words.

Senator Flynn: Yes, if it is not currently in use. I understand, however, that there is presently no site of any legislature, except possibly Edmonton, where the premises are on a hill.

The Chairman: In Edmonton it is termed «Parliament Hill,» but I do not think it is officially designated as such.

Senator Flynn: Queen's Park in Toronto is called Queen's Park. The same applies in Halifax, St. John's and Fredericton. No place apart from Edmonton and Ottawa can be termed a hill. In fact, it is a very restrictive amendment.

The Chairman: What do you think, Senator Goldenberg?

Senator Goldenberg: I suggest that since we are meeting at 10 o'clock tomorrow morning, we might deal with it for a few minutes at the outset then.

Senator Argue: I do not know why it would not be quite proper in an unofficial capacity just to ask George McIlraith what he thinks of the amendment. This bill is his baby and he is a sensible man. I think his opinion would be important.

Senator Goldenberg: I will do that. Is that agreeable?

The Chairman: If that is agreeable, we will put over until 10 o'clock tomorrow morning.

Senator Buckwold: I have another question, with respect to paragraph (c). This is a somewhat minute point, but if our purpose is to have legislation as perfect as we can make it, I think we should consider the use of the words "commercial service rendering establishment". As I interpret my dictionary, "rendering" means a process of melting down fats. That would prohibit, in my view, only a soap factory, a packing plant or reducing salon. I have requested some minor legal advice from one who is not a legal expert, who said that if a person wanted to make a case out of it they could say they were not a rendering plant it might be changed to "commercial establishment providing service".

The Chairman: Or simply "commercial establishment". Will you also consider that, Senator Goldenberg?

Senator Flynn: It means that a barber's shop could not be called "The Parliament Hill Barber Shop," but a newspaper stand could be so termed because it is not a service.

Senator Laird: We could simply strike out the words "service rendering".

Mr. Hopkins: I think the intention in paragraph (b) was to refer to sale, and of paragraph (c) to refer to goods and services.

Senator Goldenberg: That is correct.

Mr. Hopkins: "Commercial establishment providing services" would probably cover the remainder.

Senator Flynn: Would the use of the words "commercial establishment" not cover all the cases we have in mind?

Mr. Hopkins: You could contract (b) and (c) into one, if it would help.

Senator Eudes: Why should we not have the words in subparagraph (c):

en relation avec un établissement commercial . . .

Why should we add the words "de services"?

Senator Choquette: I think it is because you could have somebody start a tourist bureau. It is just rendering services. He has folders which he distributes to the Americans and other tourists to advertise the Gatineau Valley. That is rendering a service. It is not a commercial establishment such as is usually understood. I think you would have to talk about "service".

Mr. Hopkins: "Commercial establishments providing service."

Senator Choquette: That is right.

Senator Goldenberg: Of which the French is the more correct translation.

The Chairman: Could we leave this with Senator Goldenberg?

Hon. Senators: Agreed.

The Chairman: Are there any further questions? We were going to go through some of the briefs, but honourable senators have the briefs, and if they have not, they will be distributed to them. If there are no further questions, we will adjourn.

The committee adjourned.

Thursday, April 27, 1972

The committee hearing resumed at 10 a.m.

The Chairman: Last evening it was suggested that consideration of Bill C-78 be deferred until this morning. Senator Goldenberg has worked all night, and I think the suggestion he has now come up with is one that we can all agree on. Its effect is to make it clear that as far as the site is concerned this bill refers only to the National Capital Region, without interfering with the more general application of the commercial use of the name. He has also cleared up the very awkward paragraph (c).

Senator Goldenberg: I think that when you hear what I have accomplished, Mr. Chairman, you will find that you were not flattering me when you said that I had worked on it all night. I am going to withdraw the motion I made yesterday.

The Chairman: Is that agreed, honourable senators?

Hon. Senators: Agreed.

Senator Goldenberg: And I think I have a solution which will satisfy Senator Flynn, Senator Buckwold and myself.

The Chairman: And it is to be hoped everybody else.

Senator Goldenberg: Well, that is almost a majority of the committee!

Senator Flynn's point yesterday was well taken when he commented on my suggestion that the words «in the National Capital Region» be inserted after the word «combination». In lieu of that I now move that the words «in the National Capital Region» be inserted after the word «location» in 1(a) so that 1(a) will read as follows:

(a) to describe or designate a property, place, site or location in the National Capital Region other than the area of ground in the City of Ottawa bounded by Wellington Street, the Rideau Canal, the Ottawa River and Bank Street,

Secondly, Senator Buckwold gave us a lecture, and apparently he had read a dictionary, concerning the word «rendering»; and he was right too. Therefore I move that

clause 1(c) be deleted and be replaced by the following words:

(c) in association with a commercial establishment providing services.

The Chairman: Is that agreeable?

Senator Flynn: I think so. I think it covers the point adequately.

Senator Laird: Is it fair to ask if you checked with the sponsor of the bill in the other place on this?

Senator Goldenberg: Yes, I did. He agrees.

Senator Flynn: I should like our law clerk, Mr. Hopkins, to confirm that the interpretation would be that as far as the site is concerned you could call it «Parliament Hill» anywhere outside of the National Capital Region if it is not a commercial site.

Mr. Hopkins: That is right. I think it meets the point that was made and does not weaken the bill.

The Chairman: Shall the amendment carry?

Hon. Senators: Agreed.

The Chairman: Shall we report the bill, as amended?

Hon. Senators: Agreed.

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

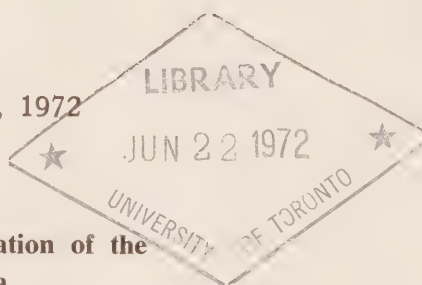
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 7

THURSDAY, APRIL 27, 1972

**Eighth Proceedings on the examination of the
parole system in Canada**



(Witnesses and Appendices—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

Honourable Senators:

Argue	Laird
Buckwold	Lang
Burchill	Langlois
Choquette	Lapointe
Croll	Macdonald
Eudes	*Martin
Everett	McGrand
Fergusson	Prowse
*Flynn	Quart
Fournier (<i>de Lanaudière</i>)	Sullivan
Goldenberg	Thompson
Gouin	Walker
Haig	White
Hastings	Williams
Hayden	Yuzyk

*Ex Officio Members

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, April 27, 1972.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:20 a.m.

Present: The Honourable Senators: Prowse (*Chairman*), Buckwold, Burchill, Eudes, Fergusson, Flynn, Goldenberg, Haig, Laird, Lapointe, Quart, Thompson and White—(13).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel and Director of Committees; Mr. Réal Jubinville, Executive Director; Mr. Patrick Doherty, Special Research Assistant.

The Committee proceeded to the examination of the parole system in Canada.

Professor Justin Ciale, Ph.D., Department of Criminology, University of Ottawa, appeared before the Committee in order to explain the "Special Report on Parole Decisions and Parole Supervision" prepared by him for the Committee.

Mr. F. P. Miller, Executive Director, National Parole Board, at the invitation of the Chairman, clarified a few points raised during the hearing.

Mr. Réal Jubinville, Executive Director for the Committee's Examination of the parole system in Canada was invited to ask questions to the witness on certain points requiring clarification.

On Motion of the Honourable Senator Buckwold it was *Resolved* that the "Special Report on Parole Decisions and Parole Supervision" prepared by Dr. Ciale be printed as an appendix to this day's proceedings. It is printed as Appendix "A".

On motion of the Honourable Senator Thompson it was *Resolved* that the chart entitled "An Overview of the Criminal Justice Aggregate in Canada", prepared by the Department of the Solicitor General, be printed in this day's proceeding. It is printed, without statistics, as Appendix "B", and with statistics for the year 1967, as Appendix "C".

At 12:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, April 27, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us today Dr. Ciale of the Centre of Criminology, University of Ottawa.

Dr. Ciale, would you please give us a brief run down on your vital statistics?

Dr. Justin Ciale, Centre of Criminology, University of Ottawa: Thank you very much.

I would like to draw your attention to a flow chart which has been loaned to me by personnel in the office of the Solicitor General. While I was there I helped develop this flow chart of the criminal justice system. Perhaps this might be a good starting point. Then we might get into some of the problems facing the National Parole Board.

This shows an over-view of the criminal justice system in Canada. As you can see, there are various levels of activity—the police, prosecution, courts, corrections and after care. It shows the entry into the system, the crimes committed, some of them founded and some unfounded, arrests, preliminary hearings, charges, and so on. The upper part of the chart deals with indictable offences, and the lower one shows summary proceedings. It also shows the juvenile stream. One can follow a person through the criminal justice stream: arrest, prosecution, trial and sentencing process. Those who are acquitted, of course, go out of the correctional stream. Those who have appealed their sentences await the decisions of the court as to whether they are guilty or not guilty. Once they are convicted, they enter the correctional system.

You may wish to look at this chart in more detail later on. As far as juveniles are concerned, the National Parole Board has no jurisdiction over them. It has jurisdiction over some of the prison inmates. But, essentially, the National Parole Board has jurisdiction over all inmates who flow into penitentiaries. The chart shows the number of crimes and people in the criminal justice system for 1967, the year when statistics were available for all parts of the system. We do not have statistics after 1969 for every part of the criminal justice system. The 1968 court statistics were just published recently; consequently, we have been working on 1967 figures. I would like to point out that of the 1,229,000 crimes known to the police in 1967 you wind up with approximately 7,000 inmates in the penitentiary who have gone through the entire criminal justice

system including the corrections stream. This is approximately one-fifth of one per cent in terms of crimes committed. So we have over one million crimes, but only about 7,000 people wind up in Canadian penitentiaries.

One thing to be considered is that there are crimes and there are people, and the crimes are independent of the people. People who are associated with crime have to be processed and in the end you are dealing with approximately one-fifth of one per cent of all crimes committed. This is a small proportion of the total crimes committed.

If you consider the provincial prison system, you have approximately 37,000 inmates. Again, this is a very small percentage in relation to the total crimes processed by the police. The National Parole Board is responsible for those 7,000 people—a breakdown would show approximately 3,000 coming into the system and between 3,000 and 4,000 going out of the system. This figure is climbing as the number of crimes increases. Of the 37,664 in provincial prisons, you have a few thousands who must apply for parole to obtain it. So the National Parole Board deals with a very small portion of the total criminal justice system.

The role of the National Parole Board, while it administers the law, also develops procedures and rules which affect the decisions with respect to a large number of offenders, between three and four thousand per year. I have provided statistics in table I which indicates the increase from 1960 to the years 1969-70. This shows the number of people who have been processed in the federal and provincial systems.

The management of the individual case is dealt with by the National Parole Service. There are regional representatives both at headquarters and in the field as an extension of the National Parole Board. These representatives deal with treatment, services and control. Once a person is paroled he must comply with the parole agreement which he has voluntarily accepted. In co-ordination with some of the after care services, the National Parole Service ensures that there is adequate supervision in the community and that the parolee lives up to his parole agreement.

I have read some of the minutes of this committee and I understand you have discussed many of these matters. However, I would like to establish the flow within the National Parole Services. The Parole Board representative contacts the man, prepares the documentation, and invites the inmate to apply for parole. One of the problems which we will be discussing later is the voluntary aspect of parole at this point. A person must apply for parole. Then after this, the case is presented to the National Parole Board.

Since 1969 the National Parole Board has instituted parole hearings within the institution and sectional panels of the Board travel to these various institutions.

The Sectional Board has the authority to decide immediately whether it will grant parole or not. It will reserve decision, grant parole or parole in principle, or deny parole. If parole is granted the inmate signs a parole agreement which contains both general and specific conditions. I believe the general conditions were outlined by the representatives of the National Parole Board when they appeared before you. In each individual case there may be specific conditions. The person might be mentally ill, have an alcoholic problem, require psychiatric treatment and so on. The parolee is handed over to a parole officer or a private agency for supervision. They make sure he lives up to the conditions of the parole agreement. If the agreement is broken, the parole officer issues a warrant of apprehension which is executed by the R.C.M.P. The parolee is picked up and if the warrant is suspended within 14 days he can continue on parole. If not, the case is brought to the attention of the National Parole Board, in which case they may either lift suspension later and continue parole or revoke parole.

This is another problem that needs study. What conditions lead to the revocation of parole? Forfeiture of parole is quite simple. The parolee who commits a new crime automatically forfeits parole and is processed through the courts and must answer for the new crime. In the case of revocation no crime has been committed but one of the rules has been broken. If the case is successful, parole is terminated.

Another point is that once a person is granted parole, the earned and statutory remission that he has been awarded while in the institution does not count and is waived. The parolee must then remain under supervision in the community for the entire period up to the expiration of the sentence. In the event of revocation, the parolee is brought back to the institution and his earned and statutory remission are awarded once again.

Let us consider some of the problems which must be dealt with. First of all there is the problem of parole supervision in the community and the role of revocation and forfeiture. Much discussion has taken place with respect to the effectiveness of parole supervision. In fact, over the past 10 years the parole revocation rate has not changed. Parole revocations have increased in absolute numbers, but not in terms of the percentage of paroles granted. It is a sliding percentage between 11 and 15 per cent. In the case of the forfeiture rate, it is also between 11 per cent and 15 per cent of inmates placed on parole during the first year. It depends on a series of factors which I can discuss later, but it hardly ever rises above 15 per cent.

Senator Buckwold: Are you referring to the first year?

The Chairman: This is during the first year.

Dr. Ciale: Yes, during the first year or during the period during which parole is active.

Senator Buckwold: The parole might last for three years. Is the second year worse or better than the first year?

Dr. Ciale: It increases after the second year, but let us discuss the first year. A number of inmates are granted parole each year, a number of inmates terminate parole, but there is always a pool of those on parole. The number who forfeit parole is always within this sliding rate, between a minimum of 11 per cent and a maximum of 15 per cent.

The revocation rate is approximately the same, between 11 per cent and 15 per cent. Combining the two rates, forfeiture and revocation yields a total of between 22 per cent and 30 per cent. Let me give you an example. If 100 inmates are released, at the end of one year there will be between 22 and 30 back in the institution either because they forfeited parole by committing a new crime or because parole was revoked. The figure might be 30 for a bad year. In the event that 1,000 are released, between 22 per cent and 30 per cent produces a considerably larger number. If 5,000 are released, the numbers increase, but the rate is always constant, yielding about 1,100 to 1,500 revocations and forfeitures. So we must not allow the numbers to persuade us that parole revocations and forfeitures are increasing. It is not; the number involved is increasing because the National Parole Board is taking a greater number of decisions, but the rate is the same.

The fluctuation between 22 per cent and 30 per cent may be due to the fact that during the past two years Canada has experienced a period of economic stress. There has been widespread unemployment. It may very well be that the parole revocations and forfeitures are influenced partly by this. I am speculating in this case and research would be necessary to find the answer. Another factor which may explain the increase from 22 per cent to 30 per cent may be attributable to police and parole supervisory practices in the community. In one year they may be lax and in another the rules may be interpreted very rigidly, so there is this shift. This is one problem which needs to be studied more adequately than it has been by the National Parole Board or the Solicitor General. A systematic study should be launched inquiring into the reasons for revocations and forfeitures. This is where the problem lies, whether we can increase or decrease it.

You might wonder how the United States compares with Canada. A few years ago the National Council on Crime and Delinquency in the United States established a uniform parole reporting system. Agreements were worked out with 54 paroling agencies, taking in 51 states of the United States of America, including Hawaii. The agencies filtered their reports to the NCCD Centre Uniform Parole System. The data was fed to a computer and the results analyzed. When a person was placed on parole his name was fed into the system. If his parole was revoked or forfeited during the year, the computer was informed, producing annual rates similar to ours.

In the United States the parole revocation and forfeiture rate hovers between 22 and 28 per cent. It is very comparable to our system, yet operates under quite different conditions: In some states parole officers assume police roles. Our parole officers are recruited mostly from criminology and social work, some are psychologists and some lawyers who are trained in the behavioural sciences. They are mostly casework oriented; whereas in several states in the United States they have peace officer powers; but the rate is still quite comparable.

Senator Buckwold: Would this mean that the quality of the parole supervision is meaningless?

Dr. Ciale: Not quite.

Senator Buckwold: You say it never goes below 22 and it does not seem to get above 30. I think that is a fairly limited swing as far as percentages are concerned. In some parts of the United States there may be some very sophisticated programs, and in parts of Canada there may not be, or vice versa. Yet everything ends up about the same. The whole parole supervision may be meaningless.

Dr. Ciale: Not quite, sir. The State of California is probably the one state that has carried out the greatest number of studies to try to isolate the factors which augur success. I have mentioned them in my paper and will not bore you with some of the more spectacular studies which they have carried out. Perhaps I should point out two of the major studies carried out by the State of California. One was, after numerous studies, to try to match parole officers with types of parolees. They took low maturity people and matched them up with police, surveillance type officers, and they matched up high maturity parolees with case work oriented types. By case work, we mean the type of person who likes to talk about his problem, the person who is sensitive to his inner processes and likes to have a sympathetic ear when in trouble. Incidentally, I must mention the condition under which this took place. Parolees were assigned randomly to various parole officers. It was found that the rates were pretty comparable, whether high maturity was matched up with case work orientation or low maturity was matched up with the surveillance type.

The essential point was the time spent with the parolee. In other words, the more time you spend with a parolee discussing his problems, the more concerned you are with what he is doing, the less likelihood there is of his returning to crime. In view of some of these results, showing that the more time spent with a parolee the better chance of success, they tried another type of approach, which is a case load management type of approach, using, for example, a classification based on age, psychological stability, type of crime and prior record. Individuals with not too many problems were assigned to large case loads, or minimum service case loads. Those people having a great deal of problems were assigned to maximum service case loads, where the parole officer would supervise only between 20 and 30 people. Therefore he would have enough time to devote to each case. Then you had the medium service case load, where the parole officer would deal with between 50 and 60 people.

In other words, you had various types of case loads: large case loads where people did not have too many problems, medium service case loads where people had a moderate amount of problems, and intensive maximum service case loads where people would be very likely to relapse.

During the first six months the results did not prove very conclusive, but in the second six months those who had been assigned to maximum service case loads showed up significant results. They were going back for less serious crimes than those people who had not been provided with those services.

In relation to your question, senator, the parole revocation rate and the parole forfeiture rate is stable. But the

thing is that supervision through a blend of treatment, control and provision of services prevents the relapse of crime. You must consider two factors. What does parole supervision achieve? One, if you have no parole supervision, as in expiration of sentence the guys go back faster. The second consideration is the number of crimes committed by those not supervised. This needs to be examined very closely. You have the table of results. I have carried out several studies in the Quebec area, and a recent study in the Ontario area confirms my findings. If you will turn to Table 4, you will see there, the heading "Frequency and Degree of Recidivism After Release from a Federal Penitentiary over a 10-year period". This is a follow-up of 246 people who were released.

Senator Thompson: From one particular federal penitentiary?

Dr. Ciale: Yes.

Senator Thompson: Which one?

Dr. Ciale: I did not want to mention it. These were the best offenders. They had been selected. They were a young group and potentially, upon clinical examination, the less criminal of the larger St. Vincent de Paul area group.

Senator Thompson: These were not the hardened type?

Dr. Ciale: That is right. These were the so called young, selected, manageable, trainable, and so forth. Out of the 246, 172 went back to crime within ten years. You have here the first relapse; 69 per cent went back to crime. 118 relapsed twice within the same period, or 47 per cent; 81 relapsed three times; or 31 per cent, and so on down the line. If you look at Table 5 you will see what the courts decided to hand out in each case. For the first relapse, for example, the courts handed out 91 penitentiary sentences, 55 prison sentences, 14 suspended sentences and 12 fines. You can look at those figures yourselves, honourable senators, and for each degree of recidivism associate what the courts handed out in each instance. You will note at the bottom of the 172 selected offenders the courts handed out 201 penitentiary sentences, 200 prison sentences, 28 suspended sentences and 50 fines.

Senator Fergusson: I believe you stated it was 241 offenders.

Dr. Ciale: I always get confused as to whether it is 241 or 246.

Senator Thompson: It is 246.

Dr. Ciale: Yes, that is right. Look at the crimes they committed; Table 6 shows you the number of crimes they committed afterwards. You will read at the top the number of crimes committed and how many people committed each type of crime. Two offenders committed homicides; 25 offenders committed 23 assaults once, one assault twice, and one assault four times; 45 offenders committed 31 armed robberies once, four committed two armed robberies each, four committed three armed robberies each, another committed four armed robberies, three committed five armed robberies each one committed up to six armed robberies, and another one committed eight armed robberies.

Of course, if you look at the category break, enter and theft and auto theft—and these are the largest categories—you will see that there were 288 break, enter and thefts, 106 theft of auto, 231 thefts and receiving, and 111 frauds. The 172 offenders, during the ten year period, committed 1,013 crimes. The number of people who did not come back, then, is 74. The balance came back at least these number of times. If you separate how effective is parole and how effective is expiration of sentence, those who were not released on parole relapsed at the rate of 80 per cent and of those who had been released on parole there was a relapse rate of 60 per cent, a difference of 20 per cent. We do not know how effective supervision is. We do know, however, that it is 20 per cent better than non-supervision with respect to relapse after a ten year period. From year to year you have benefits. We are just considering the number of crimes recorded. What about the number of crimes not recorded who are part of that million?

Senator Buckwold: May I just clarify that, because I think this is a fairly important point as to the effectiveness of the parole system. You have said that as a result of these studies 60 per cent of the people on parole went back.

Dr. Ciale: No, sir. Let me make it clear. Of these 246 offenders who were sent to federal penitentiaries nearly 50 per cent were released on parole and 50 per cent were not released on parole; roughly it would be 122 on parole, and 122 not paroled or expiration of sentence. Of the 122 paroled, over the 10-year period, 60 per cent went back to crime; of the expiration of sentence 80 per cent went back to crime, so after 10 years there is a 20 per cent difference between those who were released on parole and those who were not released on parole.

Senator Buckwold: This is the point I want to raise. We are getting into the whole area of parole supervision. Would it not be logical that the people who are released on parole are the ones who, with some, I suppose, mature consideration, are least likely to go back to crime? You would almost certainly have a much better record with respect to those on parole as against those who were released on expiration of sentence.

Dr. Ciale: That is an apparent myth, I would say. Some criminologists would challenge me, but I think that is an apparent myth. It is a myth that simply because a person is like us—has a job, a wife, et cetera—he is going to do better than a chap who comes from a ghetto, has no job, does not have a wife, et cetera. Perhaps it is so; we are not sure.

Senator Buckwold: If you follow that particular philosophy, then everyone should be granted parole without the authorities even looking at their record. In other words, as long as you felt they were ready, you should let them go.

Dr. Ciale: That is right. It is psychological preparedness; that is my point. Many people would not accept that. In Canada, as well as elsewhere, we have two schools of thought on parole. Parole should be voluntary. The parolee should ask for parole and then accept the parole agreement. I would say that we should continue along this stream. This formula would enable people who voluntarily subscribe to parole to be released earlier, but those who do not wish to apply for parole immediately should come out under some form of supervision.

The Chairman: They have it now.

Dr. Ciale: Well, I am not satisfied with the supervision they are getting now. There is a difference between controlled surveillance and supervision, and perhaps this is the problem. The question of voluntary request for parole should enable the person to come out sooner, advancing the probable release date, whereas the person who does not want parole—who wants to benefit from statutory remission which is now given to him—delays his coming out on parole, but then he is free in the community for the rest of the period. My suggestion is that a study should be carried out on the beneficial effects of earned and statutory remission. I am not convinced that this helps to motivate behaviour. It may have helped a few years ago, but the penitentiary system now has too many good things to motivate the inmate to behave, so statutory and earned remission are not really forcing people into the parole stream.

Senator Laird: The thesis you propounded, which I take it is probably acceptable to you—it came from another source—is that the more time spent with a parolee the better his chances are of rehabilitation. Am I right in assuming you support that thesis?

Dr. Ciale: Yes.

Senator Laird: Well, that has psychiatric overtones, to put it mildly, and we cannot have a psychiatrist for each parolee. Therefore, do you consider that we are making adequate use of the voluntary societies who carry out this work; or should we endeavour to enlist more aid from the John Howard Society and other like societies?

Dr. Ciale: I should like to correct one point. First of all, we do not need psychiatrists for each case. The National Parole Service does not have psychiatrists on its staff. When they need psychiatric evaluation they call upon the services of a psychiatrist.

On your second question, I would agree that we need to make more use of private resources. As a matter of fact, there are a lot of studies going on now to expand resources in the private after-care field, in the provincial probation systems, which can provide services of this kind, as well as the task force that has been named by the Solicitor General to inquire into the needs for residential community homes, how many we need, what form of payment there should be, what form of grant is required and so on. This question is being looked at.

The problem that has to be examined is the number of crimes committed under no supervision, or just voluntary requests for services, as opposed to the number of crimes committed when there is supervision. Again one has to be very careful. What do we mean by supervision? Supervision must be carefully defined. Supervision is a case work technique that has been developed through the years, which is used to work with parolees and inmates. If it is to be merely surveillance, a checkup system, then I disagree with supervision. This is not the type of supervision I am insisting on. I am insisting on the type of supervision that will help the parolee, the type of supervision that is a blend of treatments, services and control.

If people are forced to accept supervision, it will increase the absconding rate. At present in Canada, with the type of parole service we have, where parole is volun-

tary, the absconding rate is very low. In the United States, where there are many jurisdictions which use the indeterminate sentence so that parole is mandatory, everyone comes out on parole, some just leave the jurisdiction, and the absconding rate hovers between something like 6 and 7 per cent. If parole is imposed on everyone, whether it is called parole or statutory conditional release, or whatever it is called, there will probably be an increase in the absconding rate, but that should not be a reason for not implementing it. I am not convinced that the Chairman of the Board perceives statutory conditional release as being a good thing. I am not sure, I have not been speaking to him in recent months, but I think I know his thinking. He sees it as a check-off system, with the use of the police to bring in people. Is this not so, Mr. Miller?

Mr. F. P. Miller, Executive Director, National Parole Board: May I comment, Mr. Chairman?

The Chairman: Yes, I think so at this point.

Mr. Miller: The supervision that is given to people released on mandatory supervision is the same as that given to parolees. There is a preparation period in the same way; they are assigned to supervisors, who could be an after-care agency or a parole officer. The treatment given is the same.

Dr. Ciale: Then that meets my own ideas, and I will withdraw that objection.

The Chairman: Thank you.

Dr. Ciale: At any rate, the issue that has to be examined is the influence of statutory remission, which I would abolish; I would equally abolish earned remission and force people to accept parole.

The other facet that would have to be studied is the point at which the release date is decided upon. As it is now, anyone on a two-year sentence is eligible after nine months, and is usually released at the twelfth month. On three-year sentences a person is eligible for parole after one year, but I think he is released between the fifteenth and eighteenth month. Again this must be examined to see what the effects are.

If a person does not accept parole, he comes out after 16 months and 10 days, and is free for the remaining 7 months and 20 days. If a person on a three-year sentence refuses parole, he comes out at the 24th month and so many days and is free up to the 36th month. On the other hand, if he accepts parole he is under supervision for that period from, let us say, the 15th to the 36th month. There are, therefore, benefits to getting parole. The Parole Board should perhaps examine this factor more closely. Should we abolish statutory remission and earned remission? Then the question of rules of eligibility for those not coming out on parole immediately arises. At what time will they come out on parole and under what sort of supervision?

Senator Laird: Mr. Miller made it plain that the same type of supervision is given regardless of the circumstances. What I am trying to get at is this. This committee would like to come up with a recommendation which would, if it seems desirable, improve the system. I think you have hit on the key thing there. The more time that is spent listen-

ing to the woes of a parolee, apparently the better the chances of rehabilitating him. To my mind the question is what sort of a mechanical system we go through to accomplish that, because we have the problem of manpower.

Dr. Ciale: I think the problem of manpower is certainly being looked at. Parallel with that, the Departments of Criminology of the University of Montreal and the University of Ottawa are turning out criminology students. There are departments of social work across Canada who can assume these roles. I know that there are efforts in the west, in Manitoba and British Columbia, to develop programs in criminology, so the manpower situation is being examined. There are the after-care agencies across Canada, and particularly since the recent agreement between the Solicitor General and private after-care has been concluded, that the Solicitor General will pay \$37.50 per man month of supervision, many agencies, now that they are paid on a fee for service basis which is closer to actual costs, are interested in supervising parolees. The question of manpower is certainly being looked at at this point.

Senator McGrand: It is hard for me now to recapture what I was going to say earlier. You said something about there being facilities or conditions in penitentiaries today that made it difficult for people to want parole, or something to that effect. What did you have in mind?

Dr. Ciale: Prior to 1961, when the new Penitentiaries Act came into effect, I think our penitentiary system was pretty bad. There were only seven maximum security institutions and only two medium security institutions—Collins Bay and Federal Training Centre. There were very few programs. It was cellular living, and so on.

The new Penitentiary Act included provisions for earned remission and statutory remission. The administration of these two rules enabled a lot of people to want to get out of penitentiary earlier. This was a sort of a stick or a carrot that was given. It could be a carrot to the inmate if he wished to behave well and it could be a stick if he did not behave well, to hold him back in institution.

Over the years, with the new programs, there is still not enough good programs in the penitentiaries, to my mind, because most of the penitentiaries still use cell life as the mode of living.

The carrot of earned remission and statutory remission is not as effective. We have day parole if a person is eligible and wishes to pursue educational leave. There is a temporary absence program and various other training programs coming into existence. We have community release centres. So the carrot of earned remission or statutory remission is not as effective as it might have been in the past.

In addition to that, the other factor is that judges, by and large, responded very negatively to the statutory and earned remission. The Penitentiary Act came into effect in 1961. Until that time, judges were handing out sentences of two years in nearly 60 per cent of the cases. By 1963-64, when the effects of statutory earned remission became noticeable, the number of two-year sentences went down to 54 per cent; and corresponding by, three-year, four-year and five-year sentences went up. In other words, it was as if the judge was saying, "You are getting time off for good

behaviour in the penitentiary, but I am going to make sure you stay a longer time in penitentiary," and he would tack on an extra year.

The Chairman: He would discount the sentence?

Dr. Ciale: That is right. If the judge wanted a person to stay in fact two years in penitentiary, knowing the eligibility of a person for parole after nine months on a two-year sentence, he would tack on another year, so that that person would not be eligible until after 12 months. This effect was noticeable in 1963-64. The judges were handing out longer sentences, particularly to those people whom they desired to keep in longer.

Senator Buckwold: I want to question where you get that conclusion, because I have a feeling, and I can only confirm this on the basis of discussions that I have had with some judges, that this is just not a fact.

Dr. Ciale: Dr. Ciale: It is not true for every judge; you are quite right. It is not true for every judge, nor for every part of the country. But this is the other problem that needs examination.

Senator Buckwold: There are so many other variables, in this short period that you are looking at.

Dr. Ciale: That is quite true.

The Chairman: There is a visible trend?

Dr. Ciale: That is right, and this is all you can state. You could relate it to other factors, but in the absence of other factors one can only conclude that this is possibly the one that can account for it. In order to be a little more specific, we would need data to be able to analyze which factor it may be.

Senator Buckwold: You are recommending in your report that this be studied.

Dr. Ciale: That is right. I feel—and this is must a hunch—that when the National Parole Board instituted parole hearings in the penitentiaries and sectional panels from the Board started travelling, they started releasing a greater number of inmates on parole. I am sure that it has had an effect on the length of sentence, in various parts of the country, not perhaps for all offenders but for some specific classes of offenders. Since we have not got the statistics, we do not know. As I point out, the most recent statistics for the system are for 1968. The data exist somewhere, but there is no priority given to its analysis. We do not feel that it is important enough. We feel that it is worthwhile to proceed on hunch, moral judgment and anger. There is no priority. This has to be considered as a very important issue and high priority has to be assigned to the collection of data. As a scientist, I can only observe what I see and conclude from what I see. It may very well be that I am wrong, but in the absence of other factors I can say that this is what I think is happening or that this may be the explanation.

Senator Thompson: I wonder, on the last point of research material, could we get some information? Where is that material?

Dr. Ciale: That material is contained in the parole service, in the Canadian penitentiary service and in the judicial division of Statistics Canada.

Senator Thompson: In order that you can get more up to date research material, what is necessary? What I am saying is that you have suggested you have had to go back to 1968, and that other departments can give you material for a year or two back. What do we need in connection with the parole service, so that you could get that material?

Dr. Ciale: What is needed is an assignment of high priority to these tasks, the appointment of people, endorsement on the part of the persons who are heading the National Parole Board, the Canadian Penitentiary Service, the Solicitor General, to assign high priority to these tasks and devote resources to these tasks.

Senator Thompson: Would you want in-house research people, that is, within the department, or would you want this given in grants to universities and other resource facilities outside of the department?

Dr. Ciale: It takes a blend. It takes a research capability within, to define the problems and make the data available. Then you can ask outside people to do the analysis. As it is now, if you wish to carry out a study, there are very few people who can enunciate the problems. There are very few people who can monitor what is happening and who can monitor or make the data available to outside researchers. Consequently, it is a circle. It is a question of who is to do this task. They say they have not got the people. You might detach someone from the service to do the work and after six months he does not come up with an answer and you say you will wait until next year until another crisis occurs when someone wants answers. It is always in this perspective that problems are delayed.

Senator Quart: You mentioned the sectional panels of the Parole Board travelling across the country for a sort of an eyeball to eyeball analysis of the parolees' applications. Do you consider this an advantage?

Dr. Ciale: Yes, I do, senator. You are heading now on to another problem which needs to be examined.

Initially, the travelling panel was recommended for implementation because, first, many inmates never saw the decision people, the people who took decisions with respect to parole. Therefore, instituting parole hearings and a travelling board would have the effect of giving the inmate his day in court. He would have the opportunity of having discussions with the Parole Board members, who would take decisions with respect to his release. It would enable the Parole Board to give him the reason, if he were denied parole, why he was denied parole. It would also develop a treatment philosophy. If an inmate were refused or denied parole, the Parole Board would then tell him, "Look, sir, you are not behaving properly; you are not looking after your training; you are not improving yourself; you are not doing anything toward your rehabilitation. Therefore, if you do these things, then the next time we come round we will be able to assess progress in your instance and we might then grant you parole."

In fact, none of these things have occurred. But what has happened is that the sectional panels of the Board, travelling to the various institutions, have been better able to determine the type of people they are dealing with and are better able to appreciate and assist individuals. But, in fact, it has become onerous to the Parole Board member

themselves in having to be away from their homes two or three weeks at a time.

Another problem that needs to be studied, then, is what are the benefits to be derived from having local people appointed as members of the Board. In saying that, I must add that the idea has been advanced that perhaps non-professionals should be appointed to the local Parole Board. I disagree with that idea, except to the extent of adding one non-professional. The reason I disagree is that you really do need professional people to assess social danger. You do not assess social danger on a hunch basis or by having the idea that "he is a nice person" or any similar type of idea.

Assessing social danger is a professional's task and the non-professional would not be able to perform it.

Now, the idea of having parole hearings is certainly a good thing, but whether it should be done by a travelling section of the Board is a point that needs to be questioned and examined. I feel that an alternative form could be developed, taking into account which kinds of the people could carry out the same functions.

Senator Quart: Thank you.

Mr. Real Jubinville, Executive Director of Study: Since the witness has had broad experience, both in the Solicitor General's department and at the University of Ottawa, perhaps he feels there are areas which must be looked at in greater detail, and research done, in order to support any conclusions at which the committee might arrive. He has mentioned a number of topics and has spoken quite extensively regarding supervision.

Dr. Ciale: One of the points I would like to make concerns social danger and the selection for parole. I have already mentioned sectional boards. Canadians seem to be very much afraid of social danger. I feel this is a major concern with which we should be preoccupied. However, we must define what constitutes social danger.

Would you turn to Table 6, please. In conjunction with this study, I have made a study of 1,657 inmates and this is discussed in the paper which you have before you. How many people are dangerous in Canada? I would say it is approximately .003 per 100,000 people, or a very small fraction. However, when you consider 7,000 people within the correctional system and 4,000 being released per year, how many are dangerous to the public? When you are working at this level, it is about one per cent. This is a drastic change from the figure of less than half of one per cent of 100,000 people.

Senator Buckwold: What is your definition of the word "dangerous"?

Dr. Ciale: Potential killers.

Senator Buckwold: Perhaps society feels that a man who loses his temper and decides to beat up somebody is potentially dangerous. Is this man not potentially dangerous to society?

Dr. Ciale: Yes. Very often we confuse people who have the potential to kill a relative or anyone else as opposed to a person who kills to commit a crime.

Senator Buckwold: You are equating danger to the potential for murder.

Dr. Ciale: Yes, the potential to murder and to repeat that crime or any other crime.

Senator Fergusson: Are you speaking about violent crimes?

Dr. Ciale: Yes.

Senator Buckwold: Society might have a broader definition of what constitutes danger.

The Chairman: You are thinking in terms of life and limb as opposed to property?

Dr. Ciale: Yes. This is the concern we should have, is it not? This is very much like a convoy which can only travel as fast as the slowest ship. We must wait until the rest of the system catches up and this takes a long time.

The concern of social danger within a social defence framework is a legitimate preoccupation. We tend to confuse social danger to life and limb and our concept of property. In a small town or village the concept of property is very closely related to survival. We have our homes and our territorial limits. Therefore, both life and property are very important. If someone burns down my house in the middle of winter I am liable to die, especially if it happens in January. So property, life and limb are very closely interwoven. In our highly technological society we still operate at this level of thinking. Our concept of property must be revised. We do not distinguish between property essential to our survival and, let us say, a large store which sets out its wares and invites people to come in and buy. A person can walk into a store and pick up an article and you are supposed to pay for it before you walk out. However, if someone has been seduced into taking a small object we treat him in the same fashion as we treat a person who has jeopardized our lives. Whatever technical procedures we follow, when that person goes to court he is subject to the same treatment as the person who has jeopardized property or life. In our traditional way of thinking we tend to confuse these two ideas and people are punished in the same fashion as though they had jeopardized life and limb.

Senator Lapointe: If we make that concession and acquit the person who has picked up a small article in a store, the following morning there will be hundreds doing the same thing. Are you saying it is not that important?

Dr. Ciale: I am not saying it is not important. Nor am I saying it should not be examined. I am merely distinguishing between the two. I feel these should be our concerns.

If we feel these statistics are high, how many important crimes have really been committed? Do you see what I am getting at? We need to look into a number of the crimes committed. Criminologists are now studying the question of alternative ways to deal with property crimes that do not endanger life and limb. For instance, 20 years ago impaired driving was not dangerous. Today it is dangerous. We do not care what the person is drinking. As soon as he gets behind the wheel he jeopardizes life and limb. We are not concerned about his intentions but the potential consequences. Therefore, we must take measures to control this.

Senator Lapointe: Are you not of the opinion that 1,000 non-important crimes constitute an important issue?

The Chairman: The difference is in the treatment.

Dr. Ciale: In our penitentiary system we receive a lot of inadequates who commit small crimes. Of that figure of 7,000, approximately 20 per cent to 25 per cent are potentially dangerous.

Returning to my analogy of the convoy, we proceed according to the speed of the slowest ship. Of the 7,000 to 8,000 inmates in penitentiaries, 20 per cent, or 1,400 to 2,000 are probably dangerous and the remainder are overpunished.

Senator Buckwold: I am afraid my question again took the witness off the track of bringing his ideas to the committee in so far as the parole system itself is concerned. He has probably answered my question.

Dr. Ciale: I would like to make another point. Canada sends more people to jail than practically any other advanced country. Norway sentences perhaps 50 to 60 per 100,000 population while we send in the order of 220 per 100,000. In disguised form we commit more people to institutions, including the use of the social welfare rubric, and some of these are similar to those in correctional institutions.

Senator Lapointe: Are you suggesting other types of punishment, for example for theft?

Dr. Ciale: Alternative forms of dealing with offenders.

The Chairman: You are not suggesting that these matters are not important and should not be dealt with, but that we do not need a prison system to deal with most of them.

Senator Laird: The judges take that into account in their sentencing. I have seen that happen.

The Chairman: Some judges.

Senator Laird: I have seen plenty of them. They allow accused persons free on probation. We hear loud objection when actually they have done a good thing.

The Chairman: But probation is not available in all provinces. The system in Ontario is very highly developed.

Dr. Ciale: My point is that one of your considerations might be to examine the question of punishment besides using the penitentiary and parole as a system of control. There are other methods of dealing with offenders rather than through the penitentiary and parole systems. You should formulate very good ideas as to the recommendations you wish to make in order that judges may recognize and implement alternative sentencing procedures. It is quite true to say that the parole and prison systems are not effective, but we are dealing with many inadequates who should not be there in the first place.

Senator Thompson: Do you have any alternatives for these inadequates? Could you categorize other resource facilities?

Dr. Ciale: Some alternatives would be restitution to victims, work programs in the community, greater use of

probation and hostels in the community. These should all be examined.

Senator Buckwold: What differentiation should be made between the criminal, as we term him, who forges cheques and one who robs a bank?

The Chairman: With a gun.

Senator Buckwold: Yes, taking the bank's or someone's money, one with a gun, the other by forging a signature.

The Chairman: Maybe we should take the money from a little old lady and the moral problem would be clearer.

Senator Buckwold: One is a potentially violent crime and the other a crime against property.

Dr. Ciale: As it is now, according to the traditional sentencing system we wish to intimidate that person in a specific manner by putting him in prison and telling him he has shown by his behaviour that he will write cheques and defraud old ladies, orphans, et cetera.

Senator Buckwold: Senators.

Dr. Ciale: Senators and so on. Therefore we implement a machinery of justice to neutralize him. This is also to illustrate to the community that it is not good to do this because they will be treated in the same manner. So there are general and specific deterrents. I think that this process only ensures that the person is punished, later released on parole and promises not to do it again. In fact, he is not necessarily intimidated. The relapse rate for fraud artists is approximately 55 per cent. Consequently the justice system only controls a certain number, with 45 per cent not repeating and 55 per cent continues to defraud the public.

Let us consider other methods such as having the fraud artist commit himself to the victim, or setting up some type of payment system under which he will undertake the responsibility of paying the amount of money he stole. When we consider the bank robber, the question of social danger exists because he takes a gun and forcibly takes money; he also shows by his behaviour that he is likely to shoot a bystander or a teller in the bank. What is the likelihood of his repeating that crime? Many armed robbers will not repeat, but armed robbery has a 45 per cent recidivist rate. This 45 per cent group is potentially dangerous. If we do not examine alternate methods, we are not obtaining the protection which we think we are.

Senator Buckwold: In relation to the parole system, these two different types of criminal are sentenced to penitentiary and released on parole. Do you imply that there should be different approaches in relation to the parole aspect?

Dr. Ciale: No.

Senator Buckwold: Under our present system of parole, one is a potential danger to the community with respect to the life and limb and the other has a tendency to crimes against property. Should there be different types of treatment and programs in connection with their parole?

Dr. Ciale: This brings us back to the case load management. The National Parole Service in fact does not provide for different case load management types of maximum service, minimum service and medium service. In practice,

the National Parole Service members classify their cases into those who require maximum service or minimum service, but it is not authorized as a policy. Therefore if the case fails parole officers have no protection and must explain what happened in the individual case. This concept of social danger must be examined in relation to case load management. The National Parole Service and all private case agencies which assist in the supervision of parolees should have rules established so that the parole officer has the authority to do this.

The Chairman: Your point is that we need more specific regulations and policies laid down at the governmental level for the guidance of the Parole Board. In addition, presumably, the necessary support in the way of staff to implement these regulations should be provided.

Senator Lapointe: Is the purpose of saving money for the state the main, second or third consideration in granting parole? It costs a lot of money to keep them in prison. Is it the first motive for granting them parole, or the second or third motive?

Dr. Ciale: The first motive should be social protection. This social protection is achieved through working intensively with the parolees. If the parolee works well, if the parolee gets along well in the community, then you are getting that protection, because he is involved in his own rehabilitation. But if you do not do this, then he will commit crimes anyway and you are not getting the protection, and the police will have to bring them back to the courts and the prison system and say, "Look, here is a failure."

The money is an important consideration, but most of that money should go towards trying to help the person get back into the community, rather than be spent on a lot of formal procedures and police work. We always make the point that it costs more to keep a person in jail than it does to supervise them in the community. On the other hand, if you compare the amount of crime that he commits, if you do not do anything, it is pretty costly too. Either way you are caught with having to spend money. You can either increase your police forces, increase your surveillance and control forces, or spend the money on trying to put the people back into the community, and in that way perhaps making the parolees more responsible to their victims. If you insist too much on the control features, you are not getting the protection you need. The money has to be spent. If you spend the money on control aspects: police, surveillance, technology, radio and so on, this gives you a feeling of apparent security, but, in fact, it is not giving you that security.

The Chairman: Instead of talking about control in the community, if we talked about support and guidance, would this be an improvement?

Dr. Ciale: Yes, it would.

The Chairman: At least, it would give us the confidence of the prisoner, and with the support and guidance in the community we would be providing the community with the kind of protection it really wants, and have a better chance of getting it for considerably less money.

Dr. Ciale: This is why the role of the private agencies is important, in supplying a lot of the muscle to help the individual to come back into society.

Senator Buckwold: Perhaps you could continue along the lines of the question asked. If you were sitting on this committee, what other suggestions would you have for improvement of the parole service?

Dr. Ciale: Another problem that I wanted to mention is the co-ordination of day parole and temporary absence. You do need a study at this time on the functioning of day parole and temporary absence. I noticed that the Canadian Penitentiary Service, when interviewed, gave you a table outlining the number of temporary absences by region and institution. I would like to say at this point that those figures are inaccurate.

The Chairman: In what respect?

Dr. Ciale: In respect of the monitoring. It is monitored at headquarters, and headquarters does not know precisely what is going on in the regions. It depends on which institution is feeding penitentiary headquarters. First of all, you need to have a study on the use of temporary absence in the penitentiary. What is it being used for? For the purposes the penitentiaries say it is? For going out to look for a job? For going out to deal with a problem that arises with one's next of kin, and so on?

I think the program is good, but its use must be examined, because, depending on the institution, it is being used for a wide variety of purposes. What those purposes are need to be studied. Let us consider temporary absence of longer than three days—for example, 15 days. The Penitentiary Act states that the Commissioner of Penitentiaries may authorize an absence of 15 days or longer. For medical reasons I think it is justified. But if it is longer than two or three days, then it overlaps and duplicates day parole. The Parole Board or some co-ordinating body between parole and penitentiaries should deal with the co-ordination of these programs, because there is duplication, overlapping and confusion among the personnel and the inmates use this to work one group against the other. So you do not have a co-ordinated effort.

I do not have the figures in my mind, but if you look at temporary absences, for example, in the west and at those for Quebec, you would say, "Quebec does not give out many temporary absences." But that is not so. Perhaps in Quebec they are handing out temporary absences, but not registering them because the function is not important. If 15 people go swimming at the local pool, that represents 15 temporary absences.

The other thing is, which people are obtaining temporary absences? Is temporary absence eligible to every inmate or not, and how does it conflict with day parole? Day parole has a very specific use, a very good use, but it should be studied, again to outline what the objective is in relation to rehabilitation, to getting back into the community, to the main objective of reducing recidivism.

For instance, day parole is used when a person has a long sentence and is not eligible for parole, but wants to continue his education at the university, or when a person has a job and if he is not given the parole he loses the job. So it serves a very good purpose. On the other hand, what happens to a person who is on temporary absence and gets the temporary absence renewed every three days? It then has the same function as day parole. Who is responsible? Does it have the same supervisory service and control features as day parole? Day parole, temporary absence,

and community release centres must be examined so that there is co-ordination and unity of programs.

Senator Fergusson: Just to follow that up, you say that there should be more co-ordination on the Parole Board—

The Chairman: No, between the Parole Board and the penitentiaries.

Senator Fergusson: Between the Parole Board and the penitentiaries, yes. I am sorry I missed the point. I was wondering how the Parole Board could be blamed for an error on the part of whoever is responsible for these temporary absences.

Dr. Ciale: That is why I suggest that this is an area that needs to be studied. There is duplication and overlapping. It needs to be studied, and perhaps the result might very well be that there should be a co-ordinating body. As it is now an inmate can go out on a temporary absence even though the Parole Board has denied his parole.

Senator Fergusson: I see your point.

Senator Laird: Is this what you mean when you say at page 4 of your brief, and I quote:

In fact, the criminal justice system is characterized by fragmentation, overlapping and duplication of programs.

Dr. Ciale: Yes, at all levels—federal, provincial and municipal.

Senator Thompson: When the question was asked of Mr. Street, "Should the Parole Board look after all exits from penitentiaries, whether on temporary absences, parole, or whatever?" he gave the example of a young fellow whose wife suddenly dies and whose application for release, because of the red tape, might not be approved until a week after the funeral. Do you feel it would be helpful if all these matters came under the jurisdiction of the Parole Board?

Dr. Ciale: I am not quite sure. I could say *à priori* yes. I think the point you bring up is a good one. On the face of it I would say yes, the local parole board might also accept the responsibility of temporary absence. On the other hand, the temporary absence program has its own function which might be independent and does not require the study which the local parole board or the National Parole Board might require in order to say, "Yes, he is safe to be released." Under the temporary absence program, if there is a death in the family, all one needs to do in order to release an inmate to attend the funeral is examine two things: First of all, is there a death, and, if so, who can we send as an escort. On the other hand, if you had to go through the bureaucratic red tape it might take three, four or five days before any answer is received. In years gone by, I remember when we were in the institution, when someone died and we needed permission to release an inmate it was given, in most cases, almost within a half day, and generally the authority would come through on a telegram. I believe under the 1961 Penitentiary Act authorizing temporary absences these things can be dealt with immediately, but it is those other more subtle things that need examination.

The Chairman: When they start to use this for another purpose.

Dr. Ciale: When they start to use these things for another purpose which may also be good, but it should be outlined.

Senator Thompson: I appreciate your point in that respect, sir, but I have another concern, and that is this: To the public and to the news media, temporary absence, and perhaps a failure because of it, hits right at the Parole Board. I am wondering if there is some term or some way whereby it could be made clear to the public that temporary absence is not parole. Do you think that would be useful?

Dr. Ciale: That is a very interesting point. Actually this would be a public relations aspect of both parole and penitentiary programs, would it not? In the minds of the news media and in the minds of the public generally, there is very little differentiation. If the program is well defined—the purpose and the objective outlined—it would not matter who authorized it. You might say "Well, the penitentiaries should deal with temporary absences for short periods, the Parole Board should deal with parole and anything in between should be a co-ordinating body". But again this should be the object of a study because it is very confusing to everyone including the penitentiary and parole staffs.

Senator Thompson: And the inmates?

Dr. Ciale: Well, the inmate is never confused. He knows when he wants to go out. He may be confused as to which way to do obtain something, but as soon as he finds which key will unlock the door, he will go through.

The Chairman: The trouble is that as far as the public is concerned, or even the magistrate who meets a fellow on the street three weeks after sentencing him to five years, the immediate reaction is that he must be on parole. They have never even heard of anything else and they are not worried about what you call it. It is parole, as far as they are concerned, in the general sense and not in the technical sense.

Senator Thompson: Mr. Chairman, may I go back to the first statement by our witness?

The Chairman: Yes.

Senator Thompson: You told us, I believe, that for a million crimes we have this small percentage—

Dr. Ciale: It is one-fifth of one per cent.

Senator Thompson: It is obvious, from looking at that chart, no matter how we hate to say it, that crime pays. Our rate of detection and apprehension is very, very small. Is this high in comparison with other countries? I know we should not be comparing it with other countries, but it would seem to me that if a person who is considering committing a crime is aware of the fact that there are so many people getting away with committing crimes, then that is certainly an inducement to commit the crime no matter what the consequence, but if he thought that it was a crime for which he might get caught fairly quickly he might not commit it, thereby stopping the recidivism.

Dr. Ciale: You bring up a very interesting problem, senator. What is the probability of getting away with a car theft? The probability of getting away with a car theft is four out of five.

The Chairman: Depending on how long he planned to keep it?

Dr. Ciale: Yes. Only one out of five car thieves are identified and caught. The judicial division of Statistics Canada carried out a study and found that approximately 85 to 90 per cent of stolen cars are recovered and 10 to 15 per cent are stolen for professional reasons winding up in car lots or sold for parts. What is the probability of getting caught for break and enter? The probability is one out of four. What is the probability of getting caught for armed robbery? It is one out of three. What is the probability of getting away with murder? The probability is about one or two chances out of ten. In other words, the more visible the crime the more likelihood of being caught, and, conversely, the less visible the crime, such as stealing a car, break and enter, the less likelihood of being caught.

How do you relate the number of crimes to the number of people? You might have a break and enter artist who commits break and enter 10, 15 or 20 times before he is caught. You cannot identify him for the 20 crimes he has committed but you do know you have one chap who has been committing a rash of break ins. In other words, you have two systems of accounting, the people who commit the crimes and the number of crimes being committed. The laws of average will always work against you if you persist in committing crimes. If you commit one crime you are likely to get away with it. If you commit two crimes, then your chances of being caught are increased. In other words, the more times you expose yourself, the more you increase the likelihood of being caught.

The Chairman: Except on murder.

Dr. Ciale: As I say, with personal crimes the likelihood of getting caught is very high.

Senator Thompson: There are a great number of crimes not reported. I was reading that in the construction industry millions of dollars worth of goods are pilfered; with shoplifting the same applies, and according to store reports there are a lot of internal thefts.

Dr. Ciale: You are bringing up another problem. Many of the big stores such as Eatons, Morgans, Simpsons, Steinbergs, Loblaws and others, develop their own security systems; they have their own system of detecting shoplifters; they have their own ways of processing them. They may or may not bring them to the attention of the courts. With petty crimes, involving maybe a bar of chocolate or a stick of gum, the person is told not to come back; with a more expensive article it might be processed.

Senator Thompson: I am trying to relate this to parole. We do not discuss this very much, but if there were a more effective police force, which is a very tough job and involves more personnel, perhaps the inducement to commit crime would be less because of the fear of being caught. The rate of recidivism by parolees would be less because they would think it was not a life worth going into. I asked if there are countries with a more effective apprehension system, but apparently this is not so.

Dr. Ciale: In the United States and Canada the rates of apprehension are very much the same. In some European countries the rates may vary, but in the big cities it is the same, even in Europe. The likelihood of rural crime being detected decreases or increases depending on where it is committed, whether in a small village, on the highway or out in the fields. But again the number of potential victims is smaller.

Senator Thompson: I would like to read through your evidence again, but the thing that puzzled me was when Senator Buckwold asked a question following your suggestion that 11 to 15 per cent was the rate of recidivism. You said there had been a study of 51 states and 54 parole systems and the rate of recidivism was 11 to 15 per cent.

The Chairman: 22 to 28 per cent, I think.

Senator Thompson: Between 22 and 30 per cent in two categories. You talked of California as being rather advanced in its parole system, and you said there were other states which were not perhaps as advanced, which possibly had an authoritarian approach; there may be some states that have very little parole service; yet the rate for all of them remained at 11 to 15 per cent. I thought Senator Buckwold's question was very logical. The question I come to is: Why worry about the calibre of the parole system when you get this constant 11 to 15 per cent, if your figures are correct? I do not think you answered that, at least not to my satisfaction, sir. Has there been a study in a state where there has not been a parole system? In one of the counties in the States a group of social workers once went on strike. A study was conducted on the rehabilitation of their clients and it was found to be just as effective as when they were not on strike. That raises questions in one's mind. I understand that in California there were people without what we call a qualified background in parole work, who were just as effective as those who were qualified. I raise the question with you. In view of these statistics, why worry about a parole system?

Dr. Ciale: You are quite right on some of the things, but on the other hand, I disagree with some of the things you said.

Senator Thompson: Well, I quoted what you said. You say my conclusion is wrong, do you?

Dr. Ciale: Yes.

The Chairman: Maybe we should put it this way: You got an idea, but it is not the one you think it is.

Senator Fergusson:

Senator Buckwold: We have not had any comment yet, Mr. Chairman.

Dr. Ciale: I was prepared to answer until I saw the other senator about to speak.

Senator Fergusson: That is quite all right. You go ahead. I thought you were not going to answer.

Dr. Ciale: Again we have to come back and consider who we are supervising—petty thieves or socially dangerous persons? If you think in terms of petty thieves, then the number of people who potentially will commit crime is very high unless you supervise them. One of the things we

do not know is how many crimes they commit when they are not supervised. We have some estimates, as I have tried to indicate. We have some estimates when they are supervised and it is less then. That is the protection. It is like insurance. Certainly,—

Senator Thompson: If I can just interrupt you there, you say you do know that when they are supervised there are less crimes?

Dr. Ciale: Yes—at least on some of the studies that were carried out.

Senator Thompson: But in this general study you carried out you said it was between 11 and 15 per cent, which was from 51 states. It is 11 to 15 per cent in each state, and in Canada. Am I correct in that?

Dr. Ciale: Yes, but perhaps we should add the other part. You are getting from 70 to 78 per cent not committing crime, not coming to the attention of the police. That is the protection. When you compare that to those people not being supervised, the number of crimes people who are not supervised are committing is much greater.

Senator Buckwold: I just cannot follow that. Perhaps we will get it again, because this was the very first question and it is a fundamental one. You indicated that as a general rule between revocation and forfeiture 22 to 30 per cent of people on parole will be apprehended for something in the first year, and that is a statistic—

Dr. Ciale: 11 to 15 per cent forfeiture rate with new crimes; 11 to 15 per cent revocation rate.

Senator Buckwold: I combined the two. You said—

Dr. Ciale: Just a minute now. I think what you want to know is what is the return rate for discharges or expiration of the sentence.

Senator Buckwold: I want to know what the parole system is.

Dr. Ciale: But it is the other part that you have to consider. What happens to people who do not get that supervision? They go back at a high rate. That is the other part.

Senator Buckwold: Let us go back a little. You said this is a statistic that, depending on economic activity, is almost as sure as the sun rises, that it is between 22 and 30 per cent. The only evidence you gave of an improved statistic was in the sophisticated State of California.

Senator Thompson: No, he did not; he said it was just the same in the State of California.

Senator Buckwold: Well, I have been giving him the benefit of that. Granted that you look at the success rate. From what you have said I gather that the parole system, which is what we are talking about, as it generally applies across Canada and the United States, even with the varying degrees of competence of supervision, efficiency or, as I say, sophistication, really does not make that much difference. If, in fact, the function of the Parole Board was merely to say, "You are eligible for parole, out you go," and if there was no further supervision unless they were apprehended or as the result of revocation or forfeiture, this would really make a difference, granted that 70 per cent are not going to be involved.

Dr. Ciale: If I may, Senator Buckwold, be theoretical. Let us speculate. What would happen if we had no supervision? The evidence we have is that they would come back—55 per cent of them would be back in crime after five years; 80 per cent would be back in crime after 10 years. That is all we have. Is that enough? If we do apply parole, 45 per cent are back in crime after five years; 60 per cent are back in crime after 10 years. Very well. That is on the basis of the current evidence. So you have a 20 per cent difference. How fast do the parolees return? How fast do the expirations return? The rate of return is twice as fast for those who do not have supervision, who come out on expiration.

Senator Buckwold: They are a different type.

Dr. Ciale: Certainly, a different type, but not that different. Again I come back to the point that was discovered, the finding in the State of California, in matching parolees with different parole officers—high maturity with case work oriented parole officers, and low maturity with surveillance type parole officers. In the first six months, it did not make too much difference, but in the second six months it made a difference in the number of crimes, in that they were crime free and even if they went back the crimes were not as serious as those who were not supervised.

One of the things that you are talking about, that we do not know about, is how many new criminals are committing first offences, how many people are committing crimes for which they are not getting caught? This we do not know. All we do know is that we have high crime statistics. It may very well be that the parolee reports to his parole office once, twice or three times a month and is putting the gloves on, to use a professional expression, on other days. That may very well be. But that depends on the parole officer to make sure that his parolee is not putting the gloves on. That is his function.

We are caught in that open system about which we have no measures. When you evaluate what is happening to parolees and what is happening to expiration of sentences, you see that they are committing more and more crimes. Your point is perfectly right, it may very well be that you are selecting a better crop. It may very well be that, for a certain percentage of cases, but not necessarily.

Senator Thompson: The State of California, I presume from what you have stated, is considered the most advanced of any of the states in the parole system?

Dr. Ciale: It is one of the first states where they experimented a lot and where they have tried new techniques and so on. They have a lot of problems, too.

Senator Thompson: Are there statistics which justify the approach they have taken? Are there statistics which would indicate that parolees in the State of California, with all their sophistication and advancement, are having less recidivism than in the State of Kentucky or some other place where they are very unsophisticated? I realize there are other factors involved.

Dr. Ciale: That is a very big question you ask. First, they have had to deal with a lot of people who are committing crimes. Therefore, what are the most economical ways of controlling them? One of the things you must know about most of the States is that the concept of incarceration is

being questioned. Wardens are being sued on civil rights principles. They say, "You send us here for treatment. I want that treatment you are supposed to be giving me." They are also suing on other principles, "Why should I be deprived of my rights? You sent me here for punishment on the one hand, plus treatment. What is the punishment I am supposed to be undergoing when I am in this prison? Does it mean I should lose my rights to communicate with outside? Does it mean I should lose my rights to indulge in sex with my wife? Does it mean that I cannot read what I wish any more?" The whole United States correctional system is now being sapped at the roots, through these various actions. I point out, for example, the book "The Soledad Brothers," written by George Jackson, who was killed a few months ago. In the first instance, George Jackson and the Soledad Brothers were brought to trial and Angela Davis was alleged to have smuggled guns, as a result one or two offenders were killed as well as the judge and the deputy sheriff. George Jackson himself was killed a few months later, after having killed two guards and a couple of other inmates.

The whole system is being questioned in this fashion. You ask "What kind of protection does society want in the light of these things?"

Senator Thompson: I come back to my question again. We are assuming we are here because if we feel that parole will mean that people will not commit crimes again, then it is an effective tool. You are suggesting that California has a very sophisticated parole system. We may decide to recommend that we have a similar system. It would involve a lot of public money to do this. I am asking whether, in your mind, California has lessened the rate of recidivism by having this sophisticated system.

Dr. Ciale: It has. The case load management concept apparently seems to have brought better results. In other words, you are getting a lot of people coming into this system and you want to get them out as fast as possible, because it is expensive and the prison system is causing a lot of problems, with the potentiality of riots, a lot of knifings, stabbings and inter-ethnic killings between blacks, Chicanos and whites, so that you cannot operate a program. Also, it is better to bring them outside at a time when it is safe to bring them out, and not bring out a lot of people at the same time. The California Parole Board on the average supervises about 35,000 people a year and that is much more than we have.

Given these conditions, you use the most economic ways of handling a large number of people, which is case load management. People are grouped, using a four point classification. There are minimum service case loads. There are people who are more likely to be dangerous to life and property, who are put in intensive case load supervision. Then there are benefits. There are benefits in that they do not commit crimes during the period when they are in the community.

Senator Thompson: What concerns us is that you stated there is this 11 to 15 per cent who would be recidivists, and that it could be higher than that if you put two categories together. I felt you were saying, as Senator Buckwold put it, what would happen if the sun comes up and it stays. Do you feel that the State of California, with its sophisticated approach, will break that 11 or 15 per cent?

Dr. Ciale: I am not sure. That is why my first suggestion was to study the revocation and forfeiture rates, and the reasons for those in Canada. Perhaps I should insist that one of the positive aspects is that it is good for 70 to 78 per cent. Another point I made is that it does not matter what the absolute number of people is, the rate is always constant. So it is better to have them back in the community. We tolerate a lot of nuisance theft and we develop alternative ways of bringing them under control rather than sending them back into the system. We should concern ourselves with the truly dangerous to life and to property in the sense that I defined it, you know, where real life and property are involved and not just our concept of property in terms of a technological society.

Senator Thompson: Dr. Ciale, there is a concept that counselling is the effective way to deal with emotional problems and the element of dangerous anti-socialism. The basis for that concept is that the anti-social behaviour is a result of emotional disturbances at an early age, and so on. However, there is a new school of thought among psychiatrists to the effect that a certain amount of anti-social behaviour is the result of chemical rather than emotional causes. Assuming that there is validity in that idea, would that not mean that there should be a new approach in connection with counselling—that there should be greater emphasis on diet and drugs and that sort of thing? Do you feel this may be a solution to some of our problems with dangerous criminals?

Dr. Ciale: It may be. I am not convinced, though, senator. In some cases it may be because of brain damage; in some cases it may be because of chemical organization; in many cases there are people who would be typed as psychopaths who are under-socialized, have low maturity and so on, who are aggressive and have no control over their impulse life. So far there is very little evidence to support one hypothesis over another.

Senator Thompson: Do you consider there should be research in this area in Canada?

Dr. Ciale: Definitely. If I neglected to mention it, I am sorry, but I think this committee should pronounce itself on the necessity to do research in this area in order to define the criteria of social dangerousness, because, if we can then isolate the socially dangerous we can work with greater numbers of people in the community who are not a menace to life and property in the survival sense but who are a menace to property in the sense of the fraud artist and petty thief. I believe I have mentioned this necessity for research in my brief. The inadequacy of bringing these people into the system is that we must then treat them with as much seriousness as if they were socially dangerous offenders.

Senator Buckwold: Mr. Chairman, I have just one question, but before asking it, bearing in mind the time, I should first like to thank Dr. Ciale on behalf of the committee for his very able presentation and especially for what can only be considered an exceedingly informative and excellent document, his brief.

The Chairman: Would you add to that, Senator Buckwold, a motion that it be made part of today's proceedings?

Senator Buckwold: I move that the brief be included as part of the evidence, because it is certainly one of the most comprehensive submissions we have had with respect to the whole system, and the general comments contained in it are of high value.

The Chairman: Is that agreed, honourable senators?

Hon. Senators: Agreed.

(For text of brief see Appendix "A")

Senator Thompson: Mr. Chairman, would it be possible to have a copy of the chart that has been referred to included as well?

The Chairman: I understand that the chart does not belong to Dr. Ciale, but we will do our best, senator, to have a copy included.

(For chart, see Appendices "B" and "C")

Senator Buckwold: Dr. Ciale, in a one-minute answer, could you say whether punishment is a deterrent to crime?

Dr. Ciale: For one-third of the people, yes; for two-thirds of the people, no. It takes a little more.

Senator Buckwold: I had in mind that we are constantly being told that punishment is becoming increasingly less severe while crime is becoming increasingly more serious. Incidentally, when you say one-third as opposed to two-thirds, are you relating that to the total population or to the criminal population?

Dr. Ciale: My answer was with respect to the criminal population solely. In terms of the total population, punishment would appear to be effective for at least 75 per cent of the populations that is, the deterrence is effective. Of course, deterrence is a complex notion which implies, "I belong to the society." The classical punishment theory, as enunciated by Beccaria, was in reaction to authoritarianism. Therefore, at that stage in man's history it was probably a good idea to say that people should be deterred by the certainty of punishment. But that was in reaction to the arbitrariness of the sovereign and his legal apparatus. In our day the deterrent effect lies in the fact that we are part of a group. The only reason why many people do not commit crimes is that they do not want to lose the respect of the people they are with. Therefore, when you consider

the number of people who are involved in criminal activity, you must conclude that it is probably because they are not able to find a good place in society. We are now getting into the causes.

Senator Buckwold: What you are saying is that for those who are criminally inclined the fear of punishment affects only about one-third.

Dr. Ciale: It only makes them more careful.

Senator Buckwold: In other words, if suddenly we decided that the punishment for stealing a loaf of bread would be to chop off a hand—God forbid such extremes ever taking place again—that would not, in your opinion, be much of a deterrent?

Dr. Ciale: The hungry people would still try to steal, because it becomes a survival function.

Senator Quart: Dr. Ciale, what is your opinion of the suggestion that parolees be boarded or lodged with senior citizens?

Dr. Ciale: I think it would be a good idea in certain selected cases, but most people would be frightened, I think, by many of these parolees.

Senator Quart: The reason I mention that is that I have received a rather silly letter from a woman whom I do not know and who certainly is not a senior citizen but a single, unclaimed treasure. She was wondering why she would be excluded from applying to lodge some of these parolees. At the end of the letter she said that she certainly would imagine that it would be much more beneficial and much more fun. I just thought I should tell you about the letter.

The Chairman: Well, you described the situation very well.

Dr. Ciale: I would agree in certain selected cases, with the process of classification and management of parolees starting from the penitentiary system.

Senator Quart: I wrote back and said that in the case of a woman it might be all right for a younger person.

Dr. Ciale: But then the question arises: Would you board out a member of the FLQ or some other people of that type? For some people who are inadequate or who are lonely and have no family to go to such a program is indicated.

Senator Quart: Thank you.

The committee adjourned.

APPENDIX «A»

SPECIAL REPORT ON PAROLE DECISIONS
AND PAROLE SUPERVISIONPrepared for THE SENATE COMMITTEE ON
CONSTITUTIONAL AND LEGAL AFFAIRS.J. Ciale, Ph.D.
Professor
Department of Criminology
University of Ottawa.

April 20th, 1972

SOCIAL DEVELOPMENT AND SOCIAL DEFENCE

A nation's government in its daily business is concerned mainly with two broad objectives, the first of which is social development, the second is social defence. Social development is defined as the process of maintaining and improving the quality of living of its citizens; social defence is the process of ensuring that citizens can enjoy their basic freedoms, without fear of social, psychological and physical harm in pursuit of happiness.

By and large, social development is the mission of many government departments, both federal and provincial, in formulating policies, creating and implementing action programs in pursuit of defined and measurable objectives. Among the most important departments are Health, Welfare, Education, Manpower and Labour, Regional Economic Expansion, Trade and Commerce, Agriculture and Consumer Affairs. Each one of these departments may and does carry out extensive studies in research and planning to assist policy makers in developing new programs and measuring whether or not they have attained their objectives for the benefit of citizens. Indeed, specific agencies both within and outside these departments are charged with the task of nation's developmental activities and reporting back either to the departments concerned or to the nation at large about conditions in the country as well as the state of its citizens.

For example, the Economic Council of Canada collects and analyses various statistics and makes forecasts on the economic front. The Bank of Canada carries out regular surveys on the money supply and adjusts the bank discount rate either to withhold the money supply or make more of it available for expanding the economy. Health monitors the well-being of citizens, reports on epidemics, tests and monitors the effects of new foods and drugs for consumer safety and so on. Welfare agencies monitors the standard of living of all citizens to ensure that none are living below acceptable levels of existence.

Furthermore, social development programs may be observed at the action level: programs dealing with unemployment, recycling and training of unemployed skilled and unskilled workers, welfare programs for the poor, detoxication and drop in centers for drug abusers. One could go on and on enumerating the many and diverse action programs, all are aimed at improving the quality of life of a nation's citizen.

SOCIAL DEFENCE

Social defence is an equally broad concept but it is more specific in objective and in its method of implementation,

although no less important. The mission of social defence departments (both federal and provincial and including some municipal agencies) is to protect the country and its citizens from internal and external enemies.

The chief ones are the Solicitor General of Canada, the Minister of Justice and Attorney General of Canada, Provincial Attorneys' General, Solicitor Generals, Ministers of Justice, in Ontario, the Minister of Correctional Services.

The Department of National Defence along with its research arm, The Defence Research Board, is responsible for the security of the country from external enemies. It is prepared to defend foreign policy whenever the Department of External Affairs fails in negotiations with other countries. Fortunately, negotiations and compromises have characterized diplomatic activities since the end of the second world war. Consequently, the Department of National Defence has not had to resort to open hostilities; indeed, Canadian Troops have carried out safe keeping missions in many countries torn with internal strife and border disputes.

But internal security is another matter; crime, violence and delinquency are the indicators within the country which suggest whether social defence is effective or not, whether crime is under control or not. It goes without saying, that if a nation's security is threatened by internal enemies, if there is too much crime and delinquency, then social development would suffer, and of necessity, the quality of life of its citizens.

Happily, it is still quite safe to walk in the streets of major cities in Canada today, although some types of offences manifestly seem to be on the increase and might require special measures and new strategies either to eradicate or control them.

To summarize, from a national perspective, social development refers to those activities aimed at promoting healthy, educated citizens imbued with a sense of justice. Social defence, on the other hand, designates those activities aimed at preventing and controlling crime and delinquency (including violence).

THE CRIMINAL JUSTICE SYSTEM

In recent years, the concept of the criminal justice system has been invented by systems analysts to define the diverse functions of social defence institutions charged with the mission of controlling and preventing crime. The accompanying flow chart shows the total criminal justice system. It includes the processes involved, the number of offences dealt with for the year 1968 as well as the number of offenders who were brought into or found themselves in the criminal justice system for that year.

It should be kept in mind, however, that this chart only reflects the aggregate activity of the many government departments at all levels and should not be interpreted as indicating coordinated activity as is suggested. In fact, the criminal justice system is characterized by fragmentation, overlapping and duplication of programs. Each government department, as it were, has its own separate jurisdiction, administers its own laws, (except for the Criminal Code which governs everyone) and implements its own programs without having to account to any coordinating body. The appeal courts and provincial ombudsmen

decide on the legality of matters and the validity of administration. In practice, there is, no doubt, much consultation, cooperation and dialogue occurring among various levels of government, federal-provincial, interprovincial cooperation, provincial-municipal cooperation and support. But each level of government is actually free, within the limits of its financial resources, to pursue its own policies and programs.

A systems analysis approach to social defence policies and programs provides the background to an understanding of the complexity of crime control and treatment of offenders. Moreover, it is useful to planners and administrators in developing more effective policies and programs, in coordinating functions and sharing responsibilities compatible with the objectives of social defence planning.

The administration of the criminal justice system can be reduced to four broad objectives according to systems analysts. Each one of these in turn indicates or suggests programs whose importance may be assessed in terms of priority ratings for allocating funds, and subsequently, assessed in terms of program effectiveness.

The objectives or purposes and programs are hereunder listed:

<u>PURPOSE</u>	<u>PROGRAM</u>
1. Prevention and rehabilitation	1. to reduce the causes of crimes
2. Control of crime	2. to reduce recidivism
3. System of justice	3. direct prevention
	4. apprehension and conviction
	5. effectiveness
	6. relations with the community
	7. personnel
4. Contribution and Support	8. evaluation centre
	9. statistics and measurement of criminality
	10. research centre
	11. administration of the program

The several departments and/or agencies involved in the criminal justice system are listed hereunder:

Police:

The police is involved in the control of crime, by implementing programs in 1) direct prevention and 2) apprehension. These programs are carried out by municipal police agencies, provincial police agencies in Ontario and Quebec, and the Royal Canadian Mounted Police in other provinces through contractual agreements between the Solicitor General of Canada and the Provinces.

The Courts:

The purpose of the courts is to provide justice to those who are charged with offences under the criminal code, various federal and provincial statutes, federal and provincial laws and municipal by-laws. It must acquit the innocent, and convict and sentence those who are found guilty.

The Correctional Process:

The purpose of the correctional system is to reduce recidivism. It carries out the sentences of the courts in

order to comply with the objectives of reducing recidivism, by general and specific deterrence, by rehabilitative, educational, preventive and treatment programs.

Some functions of corrections are carried out by the magistrates and judges themselves when they impose absolute and conditional discharges, fines, suspended sentences and probation.

Probation Services: To reduce recidivism.

Probation services assist the judges and magistrates in providing supervisory services to probationers in the community, preparing pre-sentence reports, carrying out community enquiries and other support services to the courts.

Probation services are administered by provincial departments, usually under Attorneys' General or Ministers of Justice; however, in Manitoba, Saskatchewan and Newfoundland, these services particularly for Juveniles are under Departments of Welfare. In Quebec juvenile probation services are the responsibility of the Department of Social Affairs and adults are dealt with by the Department of the Solicitor General.

TRAINING SCHOOLS, PRISONS AND PENITENTIARIES:

Every province has one or several training schools and prisons to receive offenders who upon conviction are handed time sentences which must be served to fulfill the requirements of the courts.

In the case of a juvenile, he comes under welfare jurisdiction in Manitoba, Saskatchewan and Newfoundland, Social Affairs in Quebec, Correctional Services in Ontario, the Minister of Justice and/or Attorney General's department in B.C., Alta., N.B., P.E.I., and N.S.

In the case of adult offender, if he is sentenced to less than two years he is transferred to Provincial authorities. In Ontario and B.C. where the use of indefinite sentences under provincial statutes, sentences may be longer than two years.

If he is sentenced to two years or more (including life and preventive detention), he is handed over to the Canadian Penitentiary Service. About 6-8% of all offenders convicted of indictable offences are sent each year to penitentiaries. An inspection of the flow chart will show that this represents about one fifth of one percent of reported crimes in Canada for the year 1968.

THE NATIONAL PAROLE BOARD AND SERVICE:

The National Parole Board has exclusive jurisdiction for releasing inmates on parole in Canadian penitentiaries and provincial prisons who are serving sentences under the Criminal Code, Federal and Provincial Statutes, except in Ontario and B.C. which have their own Provincial Parole Systems to deal with those offenders who are serving indeterminate sentences under provincial statutes.

AFTER-CARE: NATIONAL PAROLE SERVICE, PRIVATE AGENCIES, HALF-WAY HOUSES, PROVINCIAL PROBATION SERVICES.

Supervision and after-care services to ex-inmates and parolees are provided by various government departments and private voluntary organizations. The National Parole

Service, an arm of the NPB has regional representatives in all parts of Canada. They coordinate resources within their regions to ensure that parole supervision, consisting of services, treatment and control are provided to parolees upon release from penal institutions, both federal and provincial.

After-care agencies, such as the John Howard Societies of Canada, the Société d'Orientation et de Réhabilitation Sociale in Montreal, the Société de Réadaptation Sociale in Quebec, and the like, and the Salvation Army provide supervisory services and treatment to both parolees and ex-inmates. Provincial probation services in several provinces through contractual arrangements provide the same services for the NPB.

Last year, a more satisfactory method of payment was concluded between the Solicitor General of Canada and various government departments and private agencies whereby the S.G. of Canada pays \$37.50 per man month of supervision to any reliable agency desiring to supervise parolees. The Solicitor General also pays \$40.00 per community investigation for any inmate, requested by the National Parole Board.

Moreover, in recent time, Half-way houses, such as the St. Leonards', St. Lawrence and others across Canada are equally eligible to provide services to parolees and ex-inmates on the same fee for service basis as after-care agencies and probation services.

These agencies in the community expand the resources and capability of Provincial and Federal Correctional Systems at minimum costs, and give meaning to the objective of reducing recidivism.

REDUCING THE CAUSES OF CRIME AND DELINQUENCY:

This objective is neither the exclusive task of criminal justice system institutions nor the unique concern of any particular government department or group. It is a national objective in which all efforts, including social development and social defence should contribute to the planning, development and implementation of preventive programs.

Reducing the causes of crime may be achieved by a wholesale and coordinated attack on many fronts; 1) research into the causes of crime and delinquency; 2) research into the causes of violence, special offender groups and organized crime; 3) research into white collar crime; 4) development and implementation of preventive action programs at local and community levels aimed at specific groups; 5) expanding services of private agencies such as YMCA, Boys' Clubs, Big Brothers, JC's, Boy Scouts and the like, including innovative programs as the need arises; 6) decriminalizing a large series of morally reprehensible but otherwise not dangerous acts: crimes without victims such as prostitution, drug usage of various types, gambling and lotteries, alcoholic types of offences and the like; 7) expanding social development programs coordinated with social defence programs to ensure maximum impact on crime prevention.

Finally, but not least, the Criminal Justice System institutions must be supported by creating evaluation centres, expanding statistic collection and measurement capability,

setting up research centres and providing adequate financial resources in support of administrative programs.

SENTENCING:

Sentencing is the final step in the trial process. It presupposes that every accused has had a fair and just trial, that the evidence has been introduced according to legal provisions laid down by law and the evidence is valid and objective. Whether it is a judge alone or a judge and jury the objective of the court is to acquit the innocent and to convict the guilty one.

The sentencing function is authorized by the Criminal Code; each offense carries a prescribed maximum penalty. The judge decides within the prescribed maximum what the actual sentence shall be. In a few offences, such as theft from mails, Narcotic Control Act, Capital Murder the judge has no choice but to pronounce the minimum set by the Criminal Code.

The manner in which sentences are handed down has been an object of study by many, the most recent one is by Professor J. Hogarth, "Sentencing in Canada." Plea Bargaining has also been studied by Professor Brian Grossman consequent upon many American studies. Guidelines to sentencing for the past hundred years—rest on three schools of thought.

CLASSICAL FUNCTION OF SENTENCING:

Beccaria in his essay on "Crimes and Punishment" first laid down the essential principles of the function of sentencing. The sentencing process has two purposes, one of general deterrence, one of specific deterrence.

General deterrence should evoke fear in the general population; knowing that repression of crime and certainty of punishment will follow upon a finding of guilt, anyone should be fearful of committing a crime. Anyone, who is not deterred by the certainty of punishment and is found guilty, is punished to reinforce certainty of punishment, while at the same time complying with the principle of specific deterrence.

Consequently, the classical theory of criminology assumes that every one who commits a crime is punishable before the law; there were to be no exceptions, neither children nor adults, neither freeborn nor serf. Bentham added, that punishment should exceed the pleasure obtained by the criminal act. The Punishment should fit the crime, thereby fulfilling the dual function of general and specific deterrence.

NEO-CLASSICAL FUNCTION OF SENTENCING:

The neo-classical school acknowledged the intimidating effect of the certainty of punishment which lay in the sentence. But it is disagreed with attributing equal responsibility to everyone: the mentally ill, young children, women and youths were not as responsible as inveterate thieves. Consequently, equal punishment for an identical crime was not acceptable. Instead, it was argued that punishment should fit the criminal, since responsibility varies among individuals; therefore, the same punishment could not be imposed on different individuals. This was the beginning of the individualization of punishment and movement away from uniformity of sentences.

MODERN VIEW: INDIVIDUALIZATION OF SENTENCES:

The modern function of sentencing has been drastically altered in the light of findings of social and behavioural sciences. Parallel with changed views toward sentencing principle, courts have been provided with a large number of devices as alternatives to incarceration, some of which still need to be implemented on a wider scale in Canada.

Professor Mewett and Mr. Common, Q.C. have expressed a modern view toward sentencing in a study entitled, *The Philosophy of sentencing and Disparity of Sentences*.

"The relative objectives that the sentencing tribunal must bear in mind are as follows:"

"First, the punishment must have some effect either on the offender or at the very least, on the community at large."

"Second, subjectively, the punishment must aim towards preventing the offender from repeating his criminal activity either by rehabilitating him or by education, by deterring him or by putting him in a position where he cannot repeat his criminal activity."

"Third, objectively, the punishment should have a beneficial effect on the community at large either by rehabilitation or education of the offender, or by deterring others as well as the offender from engaging in criminal conduct or by isolating the offender from the rest of the community."

In this approach the classical function of sentencing is retained. The individual is punished—he serves as an example to others who would dare commit similar acts. He is prevented from committing further acts, either by undergoing some form of accounting, paying a fine, submitting to probation or segregated to undergo a reeducation or rehabilitation process or for purposes of preventative detention.

The neo-classical function is equally retained for depending on the degree of responsibility of the offender, his age, maturity, criminal potential, extenuating circumstances, he undergoes an individual process of punishment: either paying a fine, suspended sentence, probation with or without fine, prison and/or penitentiary, week-end or night jail, restitution, etc.

THE PUNITIVE FUNCTION OF THE SENTENCE:

Consequently, anyone who commits a crime is liable to be apprehended for it, must stand before a tribunal of the law. Should he be found guilty, the court must convict him and pronounce a sentence which is the most appropriate, taking into account many factors, such as age, mitigating circumstances, prior criminal record, mental state, etc.

Most of the alternatives to incarceration are not punitive, yet they retain the deterring effect as incorporated in the principle of certainty of punishment.

But the time sentence to be served either in prison or penitentiary is still the most intimidating and punitive measure available to a judge or magistrate.

The purpose of the Prison and Penitentiary system is to reduce recidivism. Their task is to develop programs which achieve this objective by implementing educational, vocational, on the job-training programs, work releases, furloughs, and other peno-correctional methods. No matter to which program an individual offender is assigned, it must fulfill two requirements: 1) punishment by segregation from society; 2) rehabilitation to improve the individual.

The task of the National Parole Board is to determine within the definite time sentence imposed by the court, when the punitive function has been fulfilled according to the court's initial intention and the psychological readiness of the inmate to resume living in society as a law-abiding citizen. The purpose of the National Parole Board is the same as other institutions within the correctional process, to reduce recidivism.

DEVELOPMENT OF THE NATIONAL PAROLE BOARD AND SOME FACTS ABOUT THE CANADIAN PENITENTIARY SYSTEM.

The Ticket of Leave Act was introduced into Parliament in 1898; it copied almost word for word the English Law.

Release under the Ticket of Leave Act was greatly facilitated by Salvation Army Prison Gates Section, a voluntary organization which interviewed many inmates in penal institutions, checking character references and prospective employment for prisoners applying for ticket of leave and supervising some of the prisoners who were released.

In 1905, one of their officers, Brigadier Archibald became the first Dominion Parole Officer. The administration of the Act as well as the royal prerogative of mercy was the responsibility of officers in the Department of Justice; a separate Remission Branch was organized within the Department, which later became the Remission Service.

During the years 1929-31, the service was reorganized. The office of Dominion Parole Officer was absorbed by the Remission Service and rules of practice were formulated. This followed a period during which there had been criticism that paroles had been granted too liberally. Parole at this time could not very easily be distinguished from the concept of clemency.

Immediately after the second world war, there was considerable development in social services generally and new resources both within and outside institutions permitted greater use of ticket of leave. By 1957, the Remission Service launched an expansion program, which is still continuing under the aegis of the NPB, of opening new regional offices across Canada.

Ticket of leave was also undergoing a reexamination and was looked upon less as the exercise of clemency and more as means of providing a supervised period of readjustment in the community.

In 1953, the Minister of Justice appointed a "Committee to Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada", under the chairmanship of Mr. Justice Gerald Fauteux of the Supreme Court of Canada. The report

submitted in 1956, recommended the enactment of legislation to create a National Parole Board. These recommendations were implemented on February 15, 1959 with the proclamation of the Parole Act which provided for the federal system presently in operation in Canada.

The Fauteux report also contained many recommendations which were applicable to the Canadian Penitentiary System, particularly matters such as size of penal institutions, classification of inmates, types of programs within the institutions, preparing inmates for parole, caseload size and new remission rules.

In 1959, the Minister of Justice appointed Mr. Allan J. MacLeod, Q.C. to head the Correctional Planning Committee to examine these recommendations, review the existing resources of the Penitentiary System and prepare a ten year developmental plan. The CPS at the time consisted of seven maximum security institutions most of them built in the last century and two medium security institutions for selected young offenders who were assigned to vocational training programs. The Correctional Planning Committee also had to examine such matters as a rising penal population, riots, disturbances, assaults on guards and inmates, suicides, escapes and the like.

The recommendations of the Correctional Planning Committee, following upon the Fauteux Committee, were wide sweeping and laid the foundation for a new penology: 1) a new Penitentiary Act, 1961 was proclaimed; 2) implementation of a ten year penitentiary building program whose effects are still being felt and was not revised until the Hon. J. P. Goyer devoted himself to implementing the recommendations of the 1969 Ouimet Committee report; it included—design of a new supermaximum security institution (Special Correctional Unit); design of a new maximum (Archambault, Millhaven); two new medium security designs—a. Leclerc, Joyceville; b. Springhill, Cowansville, Warkworth, Drumheller; design of regional reception centers—now under construction at Ste. Anne des Plaines and Millhaven; design of a Narcotic Treatment Institution (Matsqui, B.C.); design of a new womens' prison (subsequently cancelled); creation of new Community Release Centers (St. Hubert, Montreal; Osborne Center, Winnipeg; Georgia Center, Vancouver, B.C.; Montgomery Center, Toronto); six new ones are planned for opening soon in other cities; new minimum security camps, industrial annexes linked to major institutions in every region of Canada; design of a medico-correctional institution (not yet built and under study at present time); 3) reorganization of penitentiary headquarters with directors responsible for each service; 4) setting up regional administrations to allow for decentralization and attribution of greater responsibility to regional directors and directors of institutions; 5) increase in classification and treatment staff; 6) institution of earned and statutory remission, shortening period of institutional stay; 7) initiation of new work release, gradual release and educational leave programs linked with temporary absences. These are by far only the major aspects.

Consequently, by the early 1960's, both the CPS and NPB had revamped laws, new administrative structures, new resources and new programs. Private after-care agencies, including Provincial Services, were equally prepared to offer services to CPS and NPB in handling and superv-

ising a larger number of prospective parolees and ex-inmates.

STATUTORY AND EARNED REMISSION:

With the proclamation of the new Penitentiary Act in 1961, every inmate in a Canadian Penitentiary felt its effect. The rules governing earned and statutory remission probably had the greatest and most immediate impact on inmates.

An inmate could advance his probable release much faster by good behaviour and application to institutional programs without having to worry about whether he could get parole or not. He could earn three days earned remission a month, equally earn a quarter of his sentence by statutory remission. Each inmate's behaviour was reviewed every three months, and his remission both earned and statutory were awarded to him. Earned remission once awarded could not be forfeited; statutory remission is subject to forfeiture, in that time is added to his sentence, usually in blocks of 3,7,15 and 30 days. Forfeiture of more than 30 days, however, requires the concurrence of the Commissioner of Penitentiaries, while forfeiture of more than 90 days requires the concurrence of the Solicitor General of Canada. In practice, an inmate does not distinguish between the two types of remission.

An inmate can also advance his probable release date by applying for parole; he is eligible for release at nine months, if he is serving a two year sentence, one third if he is serving a longer sentence, after four years on very long sentences.

In principle, if an inmate applies for parole and obtains it, neither earned nor statutory remission has any influence on the length of sentence for he is released soon after the eligibility period and subject to supervision in the community by the National Parole Service until his sentence expires, without any possibility of earning remission.

On the other hand, if an inmate refuses to apply for parole or is denied parole, he may be released from the penitentiary after 16 months and 10 days (on a two year sentence) through the operation of earned and statutory remission. Consequently, good behaviour and application to programs, without the benefit of parole will advance the probable release date so that he may obtain a maximum net benefit of seven months and 20 days of freedom.

If he is granted parole, release at the earliest eligibility date, which is nine months after admission, he regains his freedom for a maximum net benefit of 15 months. In actual fact, few are released exactly at the eligibility date. The median time spent on two year sentences is approximately twelve months. Nevertheless this means about twelve months of freedom, served in the community under supervision.

An inspection of figures 2, 3, and 4 describing the number of penitentiary inmates released by types of release from 1959-60 to 1970-71 shows that the preferred method of release during the early years of the past decade was by expiration. This is confirmed by table 1 showing Comparative Statistics on Parole Decisions as of January 31, 1972 prepared by the NPB. It reveals the

number of paroles granted to inmates in federal institutions. It was not until 1967 that parole as a method of release achieved a noticeable effect on the penitentiary population. By 1970, ten years after the creation of the NPB, the number of inmates released on parole exceeded the number of inmates terminating their sentence by expiration. Table 2 shows the percentage of inmates released by expiration and percentage of inmates released by parole. Parole release climb gradually, suggesting that not all inmates bought the program immediately; correspondingly NPB considered that many inmates were not worthy of parole during the early years.

EFFECTS OF STATUTORY AND EARNED REMISSION ON LENGTH OF SENTENCE:

The effects of both the new NPB parole policy and the new remission laws were not noticeable until 1963. To many judges and magistrates, it became evident that a large number of ex-inmates were back in the community long before the original sentences had expired. But no one distinguished between the administration of parole and the substantial benefits which inmates obtained from the "remission laws". As far as police, judges and magistrates were concerned, it seemed to them that ex-inmates were in trouble with the law again, when in fact they should have been in penal institutions.

An examination of sentences handed down by judges and magistrates between the years 1959 and 1964 shows a sudden increase in three and four year sentences and a corresponding decrease in two year sentences. In 1959, 1960, 1961, and 1962, judges and magistrates handed down two year sentences in 60% of the cases which were sent to penitentiaries; they handed down three and four year sentences in 17% of the cases and five and six year sentences in 6% of the cases. In 1963 and 1964, two year sentences decreased to 55% and three and four year sentences increased to 20%, five and six year sentences increased by 1% from a level of 6%.

It was as if judges and magistrates were saying, "well, I should give this convicted offender a two year sentence; but, since parole will shorten the sentence, I will hand down a longer sentence so that the minimum period in penitentiary will be longer". Interestingly, this shows that Canada has in fact an informal indeterminate sentence structure, with judges and magistrates setting the maximum sentence, and the National Parole Board, on the one hand, setting the minimum portion of the sentence to be served in the institution, the remission laws, on the other hand, setting another minimum for those who refuse to apply for or are denied parole.

A similar analysis covering the past three years, 1969, 1970 and 1971 to determine whether or not judges and magistrates handed down longer sentences in response to the liberal policy of the NPB is not feasible. First, as the existing statistics on release show, the NPB's expanded program began in 1969; it continued on into 1970, 1971 and early 1972 when the Senate Committee on Legal and Constitutional affairs began to inquire into parole. It would take the statistics of at least two years activity to assess the overall effects of judges and magistrates' sentencing practices. Second, statistics for these years are not available. The latest statistics of Crime and other offences are avail-

able only up to 1968; and this coincides with the year when NPB's activity expanded. Third, new counting and reporting procedures contained in Correctional Statistics, another potential source of data, does not give a break down of offenders sent to penitentiary by length of sentence.

Consequently, the answer to the very important question, whether judges and magistrates are responding negatively to the administration of parole must be delayed until a special study is initiated. The data exists and is collected by the Judicial Division of Statistics Canada but criminal statistics have low priority for government departments. Consequently, one must wait several years before data is available for analysis.

From a common sense point of view, one could say that many judges and magistrates openly question the practice of the NPB; perhaps many are giving longer sentences, but the specific effect cannot be measured at this time. One can only assume that some judges and magistrates are exercising their authority by imposing longer sentences.

It is therefore, recommended that a special study be carried out to determine to what extent, both the administration of remission laws and granting of parole are influencing, either positively or negatively, the length of sentences in Canada. The Judicial Division of Statistics Canada and a university research team should be handed the joint enterprise of carrying out this mission.

SELECTION FOR PAROLE: RULES OR GUIDELINES TO PAROLE SELECTION:

The ticket of leave, the precursor of parole was awarded as a measure of clemency to cases warranting special circumstances. We have already mentioned that the concept of clemency evolved toward a concept of parole and has become an instrument of rehabilitation to achieve the goal of reducing recidivism.

Parole is defined as "a procedure whereby an inmate of a prison who is considered suitable may be released, at a time considered appropriate by a parole board, before the expiration of his sentence so he may serve the balance of his sentence at large in society but subject to stated conditions, under supervision, and subject to return to prison if he fails to comply with the conditions governing his release." (Ouimet Report)

According to this definition, everyone is eligible for parole, but every inmate must apply for it and run the risk of being denied parole.

It should be recalled that before the creation of the NPB, many inmates were forgotten in the Institutions. Hence the Fauteux Committee recommended that every file be automatically reviewed to avoid this from happening. After the Board was set up in 1959, every case in a federal institution was reviewed automatically and decisions were made, for example, whether the inmate would be considered for parole if he applied, or whether he would be denied parole because of his prior record, type of crime, and other factors.

In addition to the automatic review, eligibility rules were set up for every type of case; where the sentence of imprisonment is for a specific number of years, one-third of the term of imprisonment imposed or four years, whichever is

less. But in the case of a sentence of two years to a penitentiary, at least nine months.

Life sentences imposed as a maximum punishment seven years, a sentence of death which has been commuted ten years.

In cases of preventive detention the offender is eligible in principle after an annual review, starting from the date on which the sentence of preventive detention was awarded.

The NPB also has guidelines for selection when there is a number of special circumstances that warrant release prior to the established eligibility date. These guidelines are based on the concept of clemency evolved over the years. They are summarized hereunder.

1. Clemency on compassionate ground owing to death, disability or related circumstances which warrant the continuing presence of the inmate in his home;

2. Employment and school attendance; deadlines for attendance at school, crop harvesting, or preservation of long term employment;

3. Reparation of inequity, extreme hardships caused by changes in law following conviction, inequitable treatment of accomplices of minimum mandatory sentence, the receipt of special representations from the judiciary or Crown Prosecutor.

4. Personal characteristics of the offender: factors of age, physical or psychological condition or circumstances which are highly favourable, such as good reputation and community support.

5. Coordination of programs: to provide for special treatment programs or to accommodate the reasonable needs of other agencies, departments or foreign governments.

In the administration of parole, the NPB makes about 23 types of decisions; these are well described in its Manual of Procedures.

FACTORS CONSIDERED IN THE DECISION TO GRANT OR DENY PAROLE:

The decision-making process in parole selection is a complex operation incorporated within a series of administrative procedures. The actual criteria for deciding whether the decision is favourable or unfavourable are listed below and any one factor, if it is serious enough may weigh the scale one way or another. Reassessment may occur at a later date if there are grounds for it, in which case a reserved decision is made. The factors summarized below are not exhaustive:

1. The offender's past criminal records, type and kind.

2. His present crime, whether there was any violence, whether the victim suffered or not, whether the amount stolen was large, and whether it was recovered or restituted; whether there were extenuating circumstances, that is, was it an accidental, occasional crime or part of organized activity.

3. The offender's age and maturity, psychological, social and mental state;

4. The offender's social resources, i.e., whether he lived alone, with parents and/or wife, whether he has children, whether others depend on him for their livelihood, etc.

5. His behaviour in the institution: does he apply himself to a specific program, keeps out of trouble, attitudes to authority;

6. Severity of sentence: what was the intention of the judge or magistrate; has the punitive portion of the sentence been fulfilled; is the offender socially and psychologically prepared to resume life in the free community;

7. Parole Plan: is the plan realistic; what are the employment prospects, living arrangements; is the community ready to receive him, the family, police, victims, neighbourhood, previous employers, if any.

8. What are his assets and debts, financial resources.

9. Attitude of the inmate: is he ready to accept parole conditions and supervision. Is he prepared to report to the police once a month and to his parole supervisor as necessary. Is he prepared to discuss his problems with his parole supervisor within the context of the parole agreement. Is there any suggestion that he will not comply with parole conditions.

10. Special problems such as narcotic addiction, mental defectiveness, alcoholism, marital instability, epilepsy and other similar conditions which might require special treatment or supervision in the free community.

11. His interests and activities: use of spare time, whether positive or negative.

Each of these factors is assessed over a long period by penitentiary personnel and by regional parole officers, the results of which are submitted in reports to NPB for consideration and decision. But the final granting of parole must be preceded by an explicit request either from the inmate himself or someone writing on his behalf.

Parole, therefore, in spite of the fact that it became a method of supervisory treatment in the community, is still related to the concept of clemency, in that the inmate must request it.

SCHOOLS OF THOUGHT ON PAROLE:

There are two schools of thought as far as parole is concerned. One school considers that parole should only be granted to those who are prepared to work actively in rehabilitating themselves. It means that they should behave in the institution, demonstrate their willingness to change, accept the parole agreement and be prepared to submit to parole supervision in the community. The concepts of voluntarism and free will prevail. If the inmate is not prepared to accept the parole process, he must be denied parole.

The second school of thought views parole as a method of releasing inmates from institutions, whether it is requested or not, and forms part of a total sentence. The court pronounces the sentence and the parole board decides which portion will be served in the institution, and which portion in the community. Parole is merely a con-

tinuation of the control procedures through surveillance as the primary means. Any violation of the rules contained in the parole agreement is sufficient ground for revocation of parole. A new crime automatically forfeits parole. The attitude of the inmate, whether positive or negative, his motivation or lack thereof may hasten or delay the granting of parole, but eventually the inmate will be released under some form of supervision.

The proponents of the first school of thought insist on distinguishing between parole, as a voluntary expression by the inmate, and compulsory forms of release, designated either as mandatory supervision or statutory conditional release. An argument in support of this view is that more and more inmates will request parole voluntarily as more and more inmates are granted parole.

The evidence in support of this view is not warranted. For example, an inspection of the Table 1 showing Comparative Statistics on Parole Decisions, January 1972 demonstrates in the early period of the NPB, 1962, as a base year, 5,573 inmates applied for and 3,701 were denied parole, with 1,872 obtaining it. This was during the early period when the NPB was continuing the tradition of the Remission Service. In 1971, 7,253 inmates applied for parole, with 4,965 obtaining it and 2,288 denied parole. Consequently, there have always been a large number of inmates who sought and still seek parole, a large number who obtain parole, and an equally large number who are denied parole but will be released at expiration of sentence. Then, there is a large number of inmates who do not apply for parole in any event, and who are released on expiration without any form of supervision.

EFFECTIVENESS OF PAROLE AS A MEASURE OF REDUCING RECIDIVISM:

Parole supervision in the community ensures that the parolee complies with the general and specific conditions of the parole agreement. There may be violation of anyone of the conditions; should it occur, the parolee is returned to the institution as a parole violator to serve the remanent of sentence, less good time credits he may have earned.

If, besides violating any of the conditions of parole, he commits a new crime, parole is forfeited; he is returned to the institution to serve his new sentence for the crime committed while on parole as well as the remanent of sentence less good time credits he may have earned.

Parole violation rates have been quite stable during the past fifteen years, holding steady at 11 to 15 percent of the number of paroles granted per year.

Parole forfeiture rates have been equally stable during the past fifteen years, holding steady at rates between minima of 11% to maxima of 15%, relative to the number of paroles granted per year.

If one combines the two rates, that is, revocation and forfeiture rates, it shows that parole violators and forfeitures return at between 22 percent to 30 percent per year.

If one wishes to calculate a monthly rate of parole violation, that is, the number of parolees returned for parole revocation and parole forfeiture relative to the total number of parolees in the community, it is about 2-3% per

month. In other words, between two and three percent of parolees are being returned every month for parole revocation and parole forfeiture.

Parole violation and forfeiture rates have tended to escalate to higher levels by about 3 percent during the past two years, but not because of poor selection or poor supervision in the community. One of the chief reasons might be the high unemployment in Canada during this period. A large number of parolees, who fall in the adequate categories are vulnerable to employment conditions in the community. Any ill fortune in finding employment makes casualties out of them. That parole selection or supervision has nothing to do with it has already been shown by the fact that parole violation rates are quite steady. It will be further shown by reference to other studies.

It one were to examine the rate of return of expiration of sentences, he would observe that the rate of return is twenty-percent higher per year. This difference in rate of return holds up over a long period, up to ten years.

The writer carried out a follow-up study of criminal files of 1677 inmates released from Quebec Institutions during 1960-61. The files of all inmates were examined and the following results were obtained.

	Mode of Release		
	Expiration of Sentence	Paroled	Total
Number of ex-inmates who did not relapse into crime.	325	405	370
Number who relapsed within five years.	610	337	947
	935	742	1,677

The above table shows that of those who were released on parole, 55 percent were crime free after the fifth year, whereas only 35 percent of those released on expiration of sentence were not involved in crime. It also shows that the NPB selected one bad case for every good one who did not return to crime, and missed 325 good cases among the expiration of sentences. However, if the NPB would have tried to pick the good ones from the pool of expiration of sentences, it would have equally picked two bad ones thereby increasing the number of poor decisions.

Another study supervised by the writer shows that out of 246 inmates released from a Quebec federal institution, 172 were back in crime during the ten years following release from vocational training. Table 4 shows the results; up to twelve episodes were recorded: 172 relapsed once, 118 relapsed twice, 78 relapsed three times, 42 relapsed four times, 30 relapsed five times, 16 relapsed seven times. Some offenders relapsed up to twelve times during the ten year period.

Table 5 shows the sentences the courts pronounced on these offenders at every episode. For the total ten years, 50 fines, 200 prison sentences, 201 penitentiary sentences, 28 suspended sentences were recorded for 172 inmates.

Table 6 shows the types and frequency of crimes committed by these 172 recidivists during the ten year period; from 1958 to 1968 a total of 1,013 known offences were committed.

The general relapse rate after ten years was 70 percent; if one distinguishes between those who were released on parole and those released on expiration, 60 percent of the parolees were back in crime, whereas 80 percent of the expirations were recidivists. An equal number of non-recidivists and violent offenders was observed: 74 did not come back, 74 committed crimes of violence, including 2 homicides.

Two studies carried out by the Judicial Division of Statistics Canada supports the above findings. The Judicial Division did a five year follow-up study of 1963 and 1964 penitentiaries inmates released on parole. Forty-five percent were back in crime during that period.

An unpublished study by Irwin Waller from Toronto, following up Ontario offenders from federal penal institutions reveals that relapse for Ontario are even higher, and ex-offenders in that province return to crime at a faster rate. Forty-five percent of parolees are back in crime after two years and sixty-three percent of expiration of sentence are back in crime.

UNIFORM PAROLE REPORTS:

In recent years, the National Council on Crime and Delinquency Research Center at Davis, California supported by National Institute of Mental Health Grants developed a reliable nation wide U.S. statistical reporting system on parole, based on 1) uniform definitions of terms and 2) individual persons on parole.

The sponsors are the Association of Paroling Authorities, Interstate Compact Administrators Association for the Council of State Governments, U.S. Board of Parole and the Advisory Council on Parole of the National Council on Crime and Delinquency. Fifty-five agencies in fifty states participate in the program.

The Uniform Parole Reports Program was initiated in the mid 1960's and more than 100,000 persons paroled during the years 1965, 1966, 1967, 1968 and 1969 have one-year follow—data in the UPR Data File. Recently, the Parole outcome of the first two years for persons paroled in 1968 was published by NCCD Research Center.

The results of parole success and failure after one year's exposure in the communities are quite constant from year to year. The results are equally consistent with parole outcome of Canadian Parolees.

Parole outcome in the U.S. based on UPR Data shows that approximately, 70 to 74 percent of parolees do well during the first year, whereas approximately 26 to 30 percent of parolees are in trouble during the same period, either as absconders, technical violators, or with new major convictions. These results based on the behaviour of a large number of persons paroled every year, about 25,000 to 30,000 cannot be attributed to chance circumstances. Moreover, the results are very consistent with the parole outcome of persons paroled by the National Parole Board in our country. It was pointed out above that parole

violation and forfeiture rates in Canada average out to a failure between 22 and 30 percent per year. The constancy of violation and forfeiture rates in the United States and Canada is remarkable.

What are the factors that can account for these fluctuations between 22 and 30 percent from one year to another. Why should the rate rise to 30 percent in any given year and go down to 22 percent the next year. From a causal point of view, aside from the fact that parolees do not behave as they should, it could be due to full employment during one year and unemployment another. Differences in Police practices from one region to another account for some variation. It may very well be that in a given region or city, a police agency may suddenly crack down on parolees. If several agencies do it at the same time, the violation rate would go up. Adequate or relaxed parole supervision both within a region and between regions would also produce variation. Some parole supervisors might exercise greater discretion as to what constitutes violation of parole conditions. If several regional representatives tend to behave in the same way during any given year, it would deescalate the violation rate. On the other hand, if several regional representatives tend to be more severe and exercise less discretion in interpreting parole violations in any given year parole violations would increase. Since it is human to err and one is seldom consistent from one year to another, it would produce the observed variations in parole variations.

The presence or absence of organized crime in any community as well as the opportunity or the lack of it to exploit victims would also produce variations, particularly if the police and/or parole supervisors are sensitive to happenings in their community.

In any event, the presence or absence of these factors, either alone or in combination would escalate or deescalate the violation and forfeiture rate as the case may be. The lower limits tend to flatten out at about 22 percent and increase to an upper limit of about 30 percent another year. Over a long term period, these limits are quite natural.

If the parole outcome after two years is examined, it shows greater fluctuation. In other words, what is the violation and forfeiture rate after two years on parole. The results of Parole outcomes in the first two years for persons paroled in 1968 were published recently by the NCCD Research Center. Out of 22,479 persons paroled by fifty-five agencies in fifty states in 1968, 65 percent were still continuing on parole, while seven percent were absconders, twenty percent were returned to prison as technical violators, and eight percent were returned for new crimes for a total failure rate of thirty-five percent.

Again these results are similar to those observed in Quebec and Ontario. In Quebec, thirty-eight percent were in trouble after two years, in Ontario (Unpublished study by Irvin Waller, Toronto) forty-five percent of parolees released from Kingston were in trouble after two years. Consequently, the forfeiture and violation rate after two years may fluctuate from a low of 35 percent to a high of 45 percent. The factors mentioned above may account for these fluctuations. Interestingly, while these results are applicable to males, female parolees do only slightly better, by about two to five percent.

To summarize, parole violation and forfeiture rates are relatively constant, within a range of about eight percent, both in Canada and the United States. About 22 to 30 percent of parolees are returned to prison after one year, either for violating conditions of the parole agreement or for a new crime (forfeiture). Follow ups on the second year of those still on parole, show about 35 to 45 percent are returned to prison (this includes the 22 to 30 percent returned during the first year).

In Canada, parole is voluntary in that the inmate must apply for it. The National Parole Board ultimately decides who shall be released on parole. Although a large number apply for and obtain parole, an equally large number are denied parole, and an equally large number do not apply for parole. Table 2 shows the number of inmates released after expiration and the number released on parole. In 1970 for every inmate parole, one inmate was released on expiration of sentence. It was only in 1971 that the proportion of inmates released on parole (60 percent) was greater than the number released on expiration.

If parole violations and forfeitures are considered as relatively serious at the prevailing rates, what must one think of those released on expiration without any form of supervision. The relapse rate is not only higher but occurs at a more rapid rate yielding a twenty-percent difference between the two forms of release.

Comparing the two forms of release, those released on parole, three out of four are still crime free after one year; three out of five expiration of sentences are crime free during the same period. Nearly three out of five parolees are still crime free after two years, whereas nearly two and a half out of five expiration of sentences only are crime free. By the fifth year, nearly two and a half parolees out of five are still crime free, whereas only about two and a half out of ten expiration of sentence are not in trouble.

These results are observed in spite of the stringest selection procedures and supervision provided by the National Parole Service with the assistance of many private after-care agencies, including the Salvation Army, and Provincial Probation Services of several provinces.

IT IS THEREFORE IMPORTANT THAT A STUDY BE UNDERTAKEN TO DETERMINE WHAT FACTORS ARE RESPONSIBLE FOR PAROLE VIOLATIONS AND PAROLE FORFEITURES IN CANADA.

PAROLE HEARINGS IN THE INSTITUTIONS: SECTIONAL PANELS OF THE BOARD:

The Ouimet Committee in 1969, in the light of the failures on parole, the low proportion of inmates being released on parole, the relatively high failure rates of ex-inmates being released without any supervision, and the absence of coherent treatment programs in Canadian Federal Penitentiaries recommended that parole hearings be held in institutions as well as implementing Statutory Conditional Release.

The rationale for recommending parole hearings rested on desirable hoped for effects to occur. Parole hearings would personalize the decision, remove the bureaucratic trappings and initiate face to face encounter between

Parole Board Members and inmates. Moreover, inmates would be given reasons why parole was refused. Presumably, it would stimulate inmates to seek out help, involve themselves in institutional programs until the next hearing; probably alert them to avoid getting into trouble in the institution, thereby shaping behaviour for the better.

Parole hearings, it was felt, would also develop a treatment policy within institutions. Parole Board members would engage in discussion on inmates' problems with institutional personnel and field officers of the National Parole Service.

Finally, travelling sections of the Board would have the opportunity of initiating contact with and interpreting Policies and practices of the Board to members of the community: police, judges and magistrates, interested citizens, penitentiary and parole personnel. The whole community would better understand the objectives of the NPB.

It was also felt that parole hearings would not only increase the number of inmates being granted parole, but would also motivate and spur reluctant inmates to apply for parole. Since the large majority would be released on Parole, the Ouimet Committee also reasoned that the minority, those who would either not be eligible or who refused to enter the parole stream, should be released by Statutory Conditional Release. This procedure could be implemented by the simple expedient of converting the period of Statutory Remission as a period of mandatory supervision.

The NPB actually implemented both recommendations, i.e., holding parole hearings in the institutions and statutory conditional release before the publication of the OUIMET Report early in 1969.

Four additional members were appointed to the Board in 1968 and sectional panels of the NPB initiated hearings in the Institutions early in 1969. The full effect of the NPB was measurable in 1970 and 1971 when 50 and 60 percent respectively of inmates were granted parole in federal penitentiaries. The first inmates to be released on Statutory Conditional Release started late in 1971. As the reader may be aware by now, although the number of parole violations and forfeitures increased in ABSOLUTE NUMBERS, it did not increase as a PERCENTAGE OF THE TOTAL NUMBER OF INMATES being granted parole. In addition, it should be recalled, many of those being released on parole, would have come out on expiration and would have relapsed in any case.

As far as the other reasons invoked for instituting parole hearings are concerned, none of have materialized. Parole Board members still hesitate giving an inmate reasons why he is refused parole. Inmates who are refused parole still do not know, what they should do to improve their chance obtaining it. Moreover, despite the fact that parole representatives brief inmates upon admission on the principles of parole, other inmates are still the most immediate, direct (and possibly distorted) and most important source of information on parole.

The development of a desirable treatment policy in concert with institutional personnel and field officers of the National Parole Service has not crystallized. In fact,

parole hearings constitute a real grind to parole board members, characterized by long routinized schedules, interview after interview, from early in the morning until later at night.

The result is that Parole Board members engaged in travelling panels have little or almost no opportunity of dialoguing on treatment policy, discussing practices of the Board and other pertinent matters. Occasionally in the smaller communities, members meet after a heavy day's work with the chief constable or police chief, sometimes with a magistrate. But only specially scheduled meetings, free of parole hearings provide the opportunity of meeting and discussing with local people. These are rare occasions. Most of the time, Parole Board members are anxious to return home to their families after an absence of several weeks.

Consequently, A STUDY BE INITIATED TO DEVELOP ALTERNATIVE FORMS OF SECTIONAL BOARD TO CARRY OUT PAROLE HEARINGS. The concept of using local non-professional people as parole board members appears to be appealing, however, it should be rejected in principle. The benefits are more apparent than real. Defining and distinguishing social danger still requires close examination and should be carried out by professionals trained in criminology and the behavioural sciences.

PAROLE SUPERVISION:

Parole supervision is a technical process managed by parole and probation officers and after-care agencies' caseworkers. Essentially, supervision consists in harmonizing a counselor's role within the limits of an authoritarian contract designated as the parole agreement.

A distinction should be made between supervision and surveillance. The first term designates the use of a broad spectrum of casework techniques with the interview as a basic tool for developing a personal relationship between the supervisor and the parolee. The supervisor's skill and resources are mobilized to help the parolee adjust, thereby ensuring the prevention of crime.

The second term, surveillance is equally broad in connotation. It may involve a simple reporting procedure: the parolee merely signs his name in a police book once a month. It may go as far as checking his constant movements in a community. By and large, it implies a visual surveillance by an external agent who seeks out the parolee's whereabouts to ensure that he is keeping out of trouble. In many United States jurisdictions parole officers have peace officers' status and are surveillance oriented as opposed to case oriented supervisors.

Good parole supervision should consist of three main activities: treatment, services and control. Treatment includes casework and guidance. The purpose is to help the parolee adjust to the community. A supervisor attempts to do this by establishing a relationship so that the parolee can realize his potential, get to understand the causes that brought him in conflict with the law in the first place and learn to respect authority.

Services include a wide range of facilities which the supervisor can call upon in response to the parolee's

needs, for example, psychiatric and psychological help, financial assistance, marital counseling, work opportunities, vocational guidance and the like. A good supervisor should know when it is timely to refer a parolee to an appropriate service agency to prevent crime at a crucial phase in the parole process.

The third aspect of good parole supervision is control. Conditions of the parole agreement which have been accepted by the parolee should not be violated. Nevertheless, conditions of parole once understood by the parolee, should be discussed only when they are in imminent danger of being violated. Moreover, a parole supervisor should know whether his clients (parolees) require maximum services and control, medium or minimum supervision. It may be that a parolee requires maximum services at certain periods and not at other times. The ability and the capacity of a parole supervisor to classify and reassign cases in a flexible manner may mean the difference between success and failure. It is therefore, the hallmark of a good parole supervisor.

The immediate objective of the National Parole Service is to reduce recidivism by keeping revocations and forfeitures as low as possible. The National Parole Services, with its regional representatives and field officers constitute the executive arm of the NPB. The private voluntary agencies, such as the John Howard Society, The Salvation Army, SORS in Montreal, SRS in Quebec, provincial probation services complement the work of the NPB in various parts of Canada.

STUDIES ON PAROLE SUPERVISION AND CASELOAD SIZES:

It has already been shown that parole forfeiture and revocation rates are quite constant both in Canada and the U.S. The State of California over the past fifteen years has carried out much research in caseload size, types of parole officers and types of parolees in trying to determine what are the best forms of supervision.

In 1953, the California Department of Corrections began phase I of its Special Intensive Parole Unit (SIPU), involving 4,300 men. Experimental caseloads of 15 parolees and control caseloads of 90 were established. The 15-man caseloads were supervised intensively for the first three months following release and were then reassigned to regular 90 man caseloads. A follow-up study of the results failed to show any superiority for the smaller caseloads despite the short-term intensive supervision.

Phase II began in 1956 and involved some 6,200 parolees. The experimental caseloads increased to 30 men and the length of stay in these caseloads was increased to six months before reassignment to 90 man caseload. At the end of Phase II, there were no significant differences in relapse rates between the two kinds of caseload services.

Phase III of SIPU began in July, 1957 with 35 and 72 unit caseloads covering some 3,700 parolees. It was initially found that medium-risk parolees in 35 man caseloads performed somewhat better. Even more important, was the finding that types of parolees did better with certain types of parole officers.

Consequently in Phase IV of SIPU beginning in 1959, an Agent-Parolee interaction study had low-maturity parolees matched with external approach (surveillance type parole officers) and high-maturity inmates supervised by internal-approach (casework-oriented) agents. Caseload sizes were reduced to 15 and 30 for the experimental caseloads as compared with 72 for the control caseloads. The findings of Phase IV suggest that the amount of time spent with a parolee was the significant difference. If an agent spent a lot of time with his parolee, the latter would more likely succeed, whether he used surveillance or casework technique, whether the parolee was a low or high maturity type.

In 1965, the California Department of Corrections moved into a Parole Work Unit Program based upon an estimate of the needs of parolees and the required time for parole officers to provide the needed services. Emphasis was therefore, shifted from the NUMBER OF CASES TO AMOUNT OF TIME REQUIRED TO MEET THE SPECIAL NEEDS OF PAROLEES. A three part classification system was devised, of maximum, medium and minimum supervision. Maximum cases were equated with about five units of work, medium as three units and minimum about one unit.

Parole officers were to supervise 120 time units of work, consequently, this meant 25 maximum-risk cases, 40 medium-risk cases and 120 minimum-risk cases. Some 6,000 parolees were involved in the work unit program, and 6,000 other parolees were supervised in 72-man caseloads. During the first six months of the program, Work Unit Parolees did no better than conventionally supervised parolees, but in the second six months the work Unit Parolees performed better in the second six months. They had difficulties of lesser seriousness on parole, fewer new felony convictions and more time in the community under active supervision. Not only significant reductions in returns to prison were reported for the Work Unit program, there were also savings in new correctional costs incurred by parolees in the program, enough to offset additional expenditures on the program.

The San Francisco Project, another large study of caseload research with probationers and parolees, was initiated in 1964. The project was designed to examine the relative effectiveness of minimum, regular, ideal and intensive caseloads. The minimal caseload, nominally the largest in size, called for reporting by mail and service upon demand. The regular caseload contained 85 persons—100 units of workload, counting investigations. The ideal caseload was a 50 unit workload, as recommended by the American Correctional Association. The intensive caseload was a 25-unit workload, half of one recommended by the A.C.A.

New probationers were assigned randomly to these various caseloads. At the end of two years, performance of the minimum cases was not significantly different from that of the regulars. The regular and ideal caseloads showed violation rates of 22 and 24 per cent, respectively. The intensive caseloads had a violation rate of 38 percent. The inflated rate contained a high proportion of technical violations, presumably a consequence of the higher amount of supervision provided. If technical violations were excluded from the analysis, there were no significant dif-

ferences in violation rates between minimum, regular, ideal and intensive caseloads.

Phase II of the San Francisco Project shifted attention from the random assignment of offenders to these caseloads to a classification scheme which placed low-risk offenders in minimum supervision caseloads and high risk offenders in intensive caseloads and average-risk offenders in regular caseloads.

Four factors were identified as critical for the classification of offenders: age, prior record, current offense and psychological stability. Assignment to one of the four types of caseloads, minimal (with 350 offenders per caseload), normal (with 65 offenders) ideal (with 40) and intensive (with 20) would be determined by the offender's profile with respect to the age, offense, record, stability variables.

In general, the more difficult the profile or pattern presented by the offender, the smaller the caseload size to which he would be assigned. This would allow parole supervisors to devote more time to difficult cases and be in keeping with the finding mentioned above, the more time a parole supervisor spends with a parolee who needs service and supervision, the more likely the parole outcome will be positive.

At the present time, NPB policy and rules do not provide for caseload management as discussed above, the more time a parole supervisor spends with a parolee who needs service and supervision, the more likely the parole outcome will be positive.

At the present time, NPB policy and rules do not provide for caseload management as discussed above. In fact, field officers and regional representatives of the NPB informally classify parolees under their supervision according to those requiring Maximum Caseload Supervision, medium supervision and minimal supervision. But they do not have the authority to do so, and if a parolee misbehaves, the parole supervisor must explain what happened in the circumstances. This is all very well and in keeping with procedures, but one can well imagine that the parole officer must defend his position, consequently vitiating much creative and innovative work.

The introduction of specialized caseloads should be implemented in an experimental fashion by the National Parole Board in Canada, with a view to determining adequate caseloads compatible with the protection of society and the readjustment of the parolees in the community.

IT IS, THEREFORE, RECOMMENDED THAT STUDIES BE IMPLEMENTED USING CASELOAD CLASSIFICATIONS SUCH AS MAXIMUM SERVICE CASELOADS, MEDIUM SERVICE CASELOADS, MINIMUM SERVICE CASELOADS. IN ADDITION, PAROLEE PROFILES BE ESTABLISHED BASED ON AGE, CURRENT OFFENSE, PRIOR CRIMINAL RECORD, PSYCHOLOGICAL STABILITY, WORK RECORD AND SUCH RELEVANT FACTS. THESE PAROLEE PROFILES SHOULD BE EXAMINED SO THAT PAROLEES CAN BE ASSIGNED TO APPROPRIATE CASELOADS COMPATIBLE WITH THEIR NEEDS. THE RESULTS SHOULD BE EVALUATED IN TERMS OF PAROLE OUTCOME, COST-BENEFITS' EASE OF MANAGE-

MENT OF LARGE NUMBER OF PAROLEES, AND THE BEST USE OF MANPOWER IN THE NATIONAL PAROLE SERVICE.

In keeping with the above, CASELOAD MANAGEMENT STUDIES should also be undertaken. The purpose would be to determine the appropriate work unit per caseload per parole officer. Everyone accepts the standard proposed by the American Correctional Association Manual. It may very well be adequate, and acceptable, but actual studies are required within the National Parole Board to determine the amount of time allocated to management tasks, such as report writing complying with administrative procedures, correspondence and how much time is devoted to supervisory functions, interviewing of inmates, parolees, and collaterals. It may very well be that the P.S. Ross Report has already supplied some answer to this question. If not it should be the object of a study. The results should be pertinent in helping to develop work units for the different caseload services.

Superficial examples of work units are as follows:

	Time
1. Treatment — interviewing in the office, counseling, guidance, developing a personal relationship	depending on the case.
2. Services — correspondence on behalf of the client, phone calls, referring client to other services, interviews with appropriate people.	depending on parolee's need
3. Control — Home visits, employer, contact with police, visit at local pubs, etc.	depending on maximum of minimum classification of parolee
4. Administration: balance between 1, 2 and 3 in the light of the number of clients.	

The parolee profiles would determine how many could be handled per month whether they require maximum services or minimum supervision.

STATUTORY CONDITION RELEASE: MANDATORY SUPERVISION:

The reader is aware by now that parole failure is a problem, and the more inmates are released on parole, the greater the number of forfeitures and revocations, unless some new methods are proposed and implemented.

At any rate, a large number of inmates will still continue to be released on expiration because they have either been denied or refused to apply for parole. In that event, they shall be released at about two-thirds of their sentence owing to earned and statutory remission. This group, constituting by far the most dangerous or potentially more criminal than those selected for parole are released without any form of control.

It is for this reason that the Ouimet Committee recommended Statutory Conditional Release for those who are released on expiration. The Ouimet Committee defined Statutory Conditional Release as:

"A procedure whereby an inmate of a prison who has not been granted parole is released before the expira-

tion of his sentence at a date set by statute so he may serve the balance of his sentence at large in society but under supervision and subject to return to prison if he fails to comply with the conditions governing his release."

While it may be true that this vitiates the spirit of voluntary parole, and may ultimately become simple surveillance, it still enjoins the ex-inmate, under a different status, of course, to seek out help with more legitimacy than merely being an "ex-inmate".

The argument that they will return to prison at a faster rate is only partly valid. It should be remembered that the relapse rate for this group is highest during the first year, about nine per hundred the first three months after release, about seven and half per hundred the second three months, about six per hundred during the third quarter and five and one half per hundred between the tenth and twelfth month. How much faster can they return! It may very well result in a moderate increase in Penitentiary Admissions, since violations and forfeitures committed during the term of Conditional Release will now become a federal responsibility.

The argument questioning the intimidating effect of potential loss of Statutory Remission is only partly valid. This argument neglects the purpose of Conditional Release. While Statutory Conditional Release carries duress, it should also compel ex-inmates who are interested in going straight by seeking help and guidance from their parole supervision.

Some of the negative anticipated effects are probably an increase in the rate of absconders, i.e., those who leave the jurisdiction. Another potentially negative effect is that some Conditional Releasees may commit more violent crimes to escape detection and apprehension.

Nevertheless, these persons might well be assigned to Maximum Services Caseloads, during the first three or six months in the community. The costs-savings in terms of incarceration and reduction of crime should be sufficient to neutralize the negative effects and attitudes which are anticipated.

CONSEQUENTLY, IT IS RECOMMENDED THAT STATUTORY CONDITIONAL RELEASES SHOULD BE STUDIED from several points of views: 1) profiles should be established on each Conditional Releasee; 2) Assigned to Maximum Services Caseloads for the first six months after release; 3) Cost of the program should be determined; 4) Savings computed—earnings of Conditional Releasees, adjustment problems, Parole supervision problems; calculation of crime indices during the period in the community to determine benefits, both human and economic.

SOCIAL DANGEROUSNESS: CONCEPT:

The concept of social danger was developed in the last century by the Positivist School of Criminology in Italy by Lombroso, Ferri and Garofalo; however, it was the latter who attempted to define the legal criteria of social danger. In recent decades, Etienne de Greeff and Jean Pinatel developed the clinical criteria on which the concept now rests. There are two phases in the definition of social

danger. Social capacity to adjust and social danger. The latter can be spelled out by four behavioural traits: 1) aggressiveness; 2) emotional lability; 3) egocentricity; 4) emotional indifference.

How many people possessing these characteristics can be found in the population at large and are in fact dangerous? On a rough estimate, it might be as low as 0.003 per 100,000 population. To pick them out is another matter, for they must come to the attention of the authorities after some crime has been committed.

How many people possessing these characteristics can be found in prisons and penitentiaries and are in fact dangerous? Again, based on follow-up estimates, about one percent of the population. It should be kept in mind, that a penitentiary population constitutes a very select group of people, about 7,000 out of 21,000,000 million people. And only about one percent would fall in the social category.

These include all offenders, as well as murderers. In other words, out of a hundred murderers, one percent is likely to kill again. Out of a hundred armed robbers, one out of a hundred is likely to kill.

If one considers, how many people might perpetrate harm, if caught in a tight situation, the number is slightly higher. A rough estimate is about 22 per cent of the penitentiary population. Although they do not possess all the characteristics mentioned above, they possess some of them in varying degree. Follow-up studies show that at least one percent will commit crimes of murder, about twenty-two percent will commit crimes of violence, the whole range, rape, assaults, woundings, armed robbery and so on.

This second group constitutes a threat to any community; and while distinct from the tiny one percent of real monsters, it is responsible for creating a valid and objective judgement that we must be protected from violent offenders. On the other hand, society in its efforts to protect itself from this group, overreacts by being very punitive towards the larger group, about seventy-seven percent of all offenders who are nuisances, pests, rejects, inadequates, mentally unstable personalities and socially dependent people.

Police agencies are aware of these extremely dangerous people, both the one percent who need no provocation to kill, and those who look for opportunities to exploit victims and in the ensuing interaction are likely to harm both innocent by-standers and the police. In recent years, with the liberalization of parole, some of these people have been released, because of poor classification procedures, inadequate observation in the penitentiary, inexperienced criminologists and correctional workers and lack of programs in the penitentiaries. Consequently, police agents have had to kill some of these types of persons either during a dragnet when a shoot out occurred or at the scene of a crime, such as, a hold-up or a like situation. In some cases, policemen have been the targets of these people.

It is, therefore, imperative that RESEARCH BE IMPLEMENTED IN THIS AREA TO DEFINE AND DEVELOP CRITERIA OF DANGEROUSNESS and to classify those people who possess these criteria. It should, however, be a

thoroughly criminological study, carried out with the cooperation of criminal justice agencies, including police, the judiciary and correctional services and that their files and documents be available to researchers.

There should also be parallel studies showing the relationship between amount stolen (or damage caused) and the consequent punishment, in order to develop alternative forms of controlling crime. Too many people are being sent to prisons and penitentiary for petty offenses. These are confounded with dangerous criminals and severe and costly punishments are imposed in order to satisfy society's need to control people. There are no criteria of proportionality between damage done, punishment and cost in our technological society today. New concepts of punishment, restitution and decriminalization processes have to be developed; new concepts toward property have to be developed so that punishment is proportional to real damage to LIFE AND PERSONAL PROPERTY and not to property which has a different significance in our permissive society.

DAY PAROLE AND TEMPORARY ABSENCE:

Day Parole is granted under the authority of the Parole Act while Temporary Absence is granted under the authority of the Penitentiary Act. Day Paroles have been granted in modest numbers since 1962, but increased drastically during 1970 and 1971 when 698 and 1,185 were granted in each respective year.

Temporary Absence came into effect with the proclamation of the Penitentiary Act in 1961 but unlike Day Parole, it was used infrequently until 1968. Like Day Parole, the Temporary Absence program came into widespread use into 1970 and 1971 particularly in certain regions, such as Matsqui and Drumheller. If present trends continue, both Temporary Absence and Day Parole will be used increasingly.

In principle, there should be no conflict between the simultaneous operation of both programs if they were coordinated for both aim different objectives. The Temporary Absence program gives a Director of an Institution the necessary authority to allow an inmate to return to the community to conduct urgent or immediate business (with or without escort) without having to request permission either from Headquarters or the NPB. In the event of a death in the family, illness of a relative, interview with a prospective employer prior to release are all worthy reasons. The prolonged illness of the inmate equally justifies Temporary Absence over a longer period.

Day Parole is granted when an inmate who has a long sentence, wishes to continue in an occupation which he might lose; again, if an inmate wishes to enrol and is eligible to pursue educational programs of long duration in the community but the eligibility rules prevent his being granted a parole. A Day Parole is a device which retains the control features of the sentence but allows the inmate to proceed into the community without escort. He may return to the institution at night or be assigned to a Community Release Center.

Both programs have great merits, for in the not too distant past, neither the old Penitentiary Act nor the

Remission Laws provided for such flexibility of programming of activities.

In practice, however, both programs are duplicating one another, and depending on which service gets to the inmate first, that will be the one who will give permission to the inmate to proceed into town. It is not unusual to observe a person denied parole one day, walk out of the institution the very next day without escort, with a temporary absence pass in his pocket.

Another observation is that temporary absences are not being used for the same reasons from one region to another, nor are they used as widely in one region as another. For example, in some areas away from urban communities, temporary absences are used for athletic activities, to go swimming, etc. In other areas, closer to large cities, temporary absences are used to visit the downtown area and the like. Another observation is that the temporary absence is not used for consistent reasons as is the day parole.

Consequently, it is recommended that both the day parole and temporary absence program be studied by an independent non-government research group for establishing the following aspects:

- 1) determine the best way to coordinate day parole and temporary absence programs, particularly tempo-

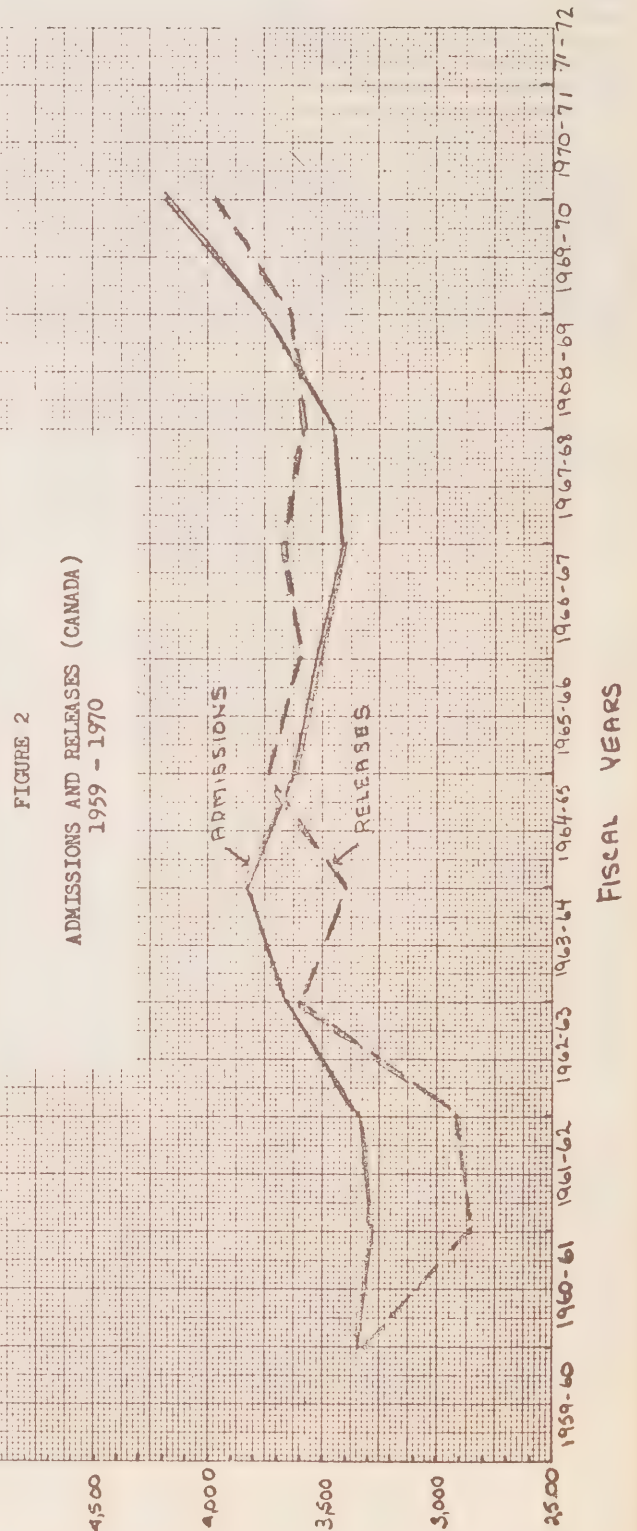
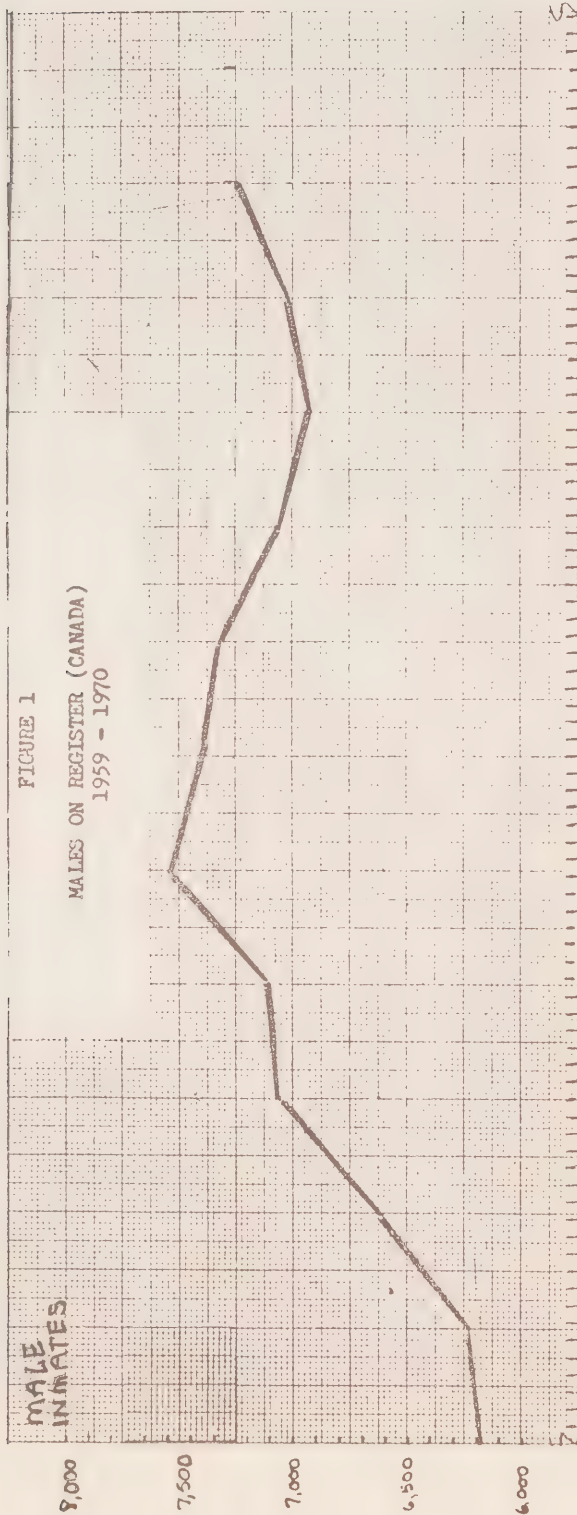
rary absences for periods longer than 15 days for potential overlap with day parole and conflict of responsibility over an inmate.

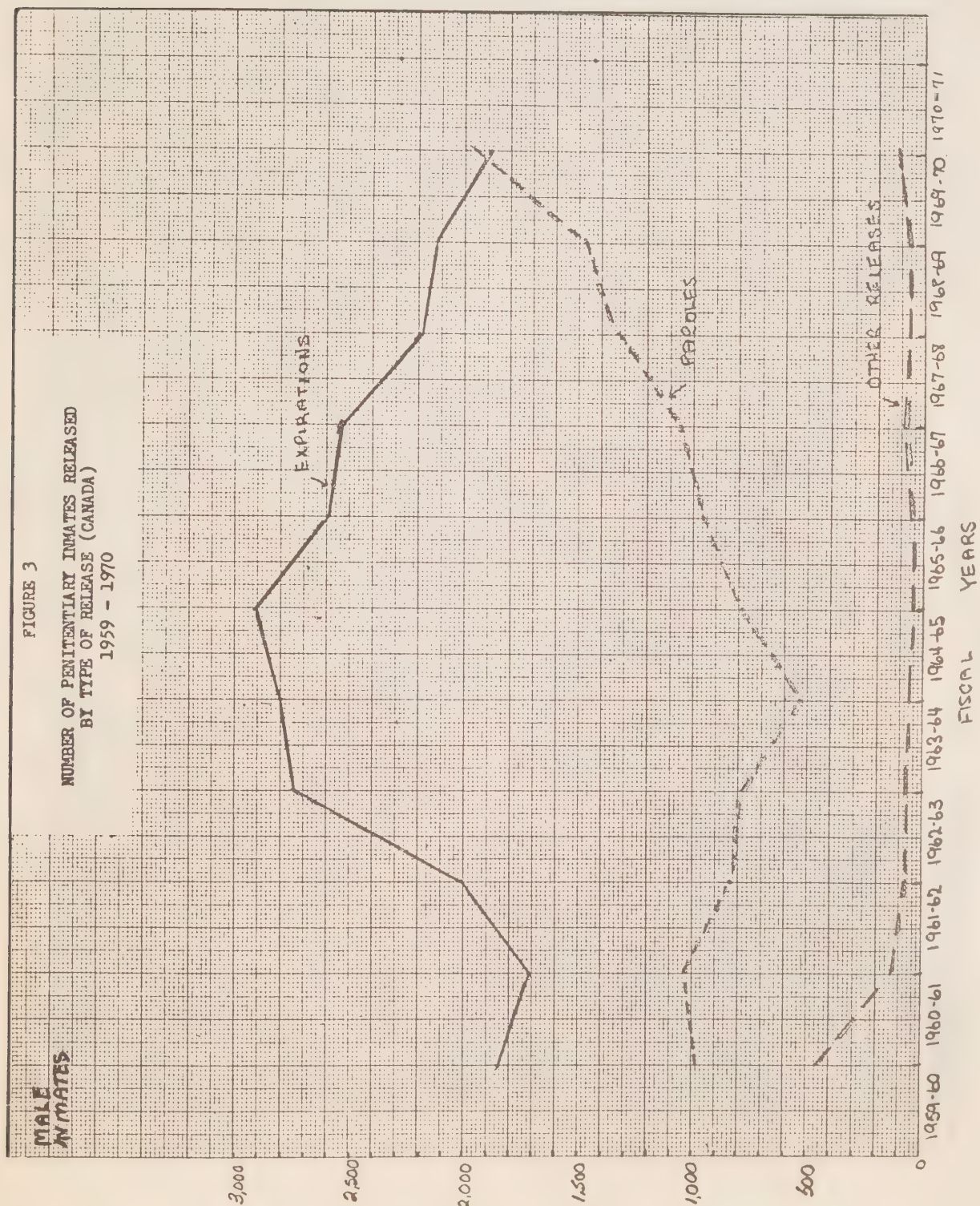
- 2) establishing guidelines by regions for temporary absences and day parole.

- 3) determining actual uses of temporary absences; although there appears to be a widespread use of temporary absences, it does not show how many people actually go out on temporary absence, e.g. Ten persons may be going out every day for 200 days would yield 2,000 days of temporary absence. This figure may appear impressive, yet only 10 people benefit from the program! Consequently, an index should be developed to give a more accurate measure of temporary absences related to the number of people according to the number of days. The types of activities should also be described more accurately.

- 4) Measuring community receptiveness of the temporary absence program particularly police agencies and magistrates.

- 5) Measuring the offences, both number and types, committed while on temporary absences and day parole. The figures given by the Canadian Penitentiary System should be questioned for accuracy since it has no research capability to provide adequate answers.





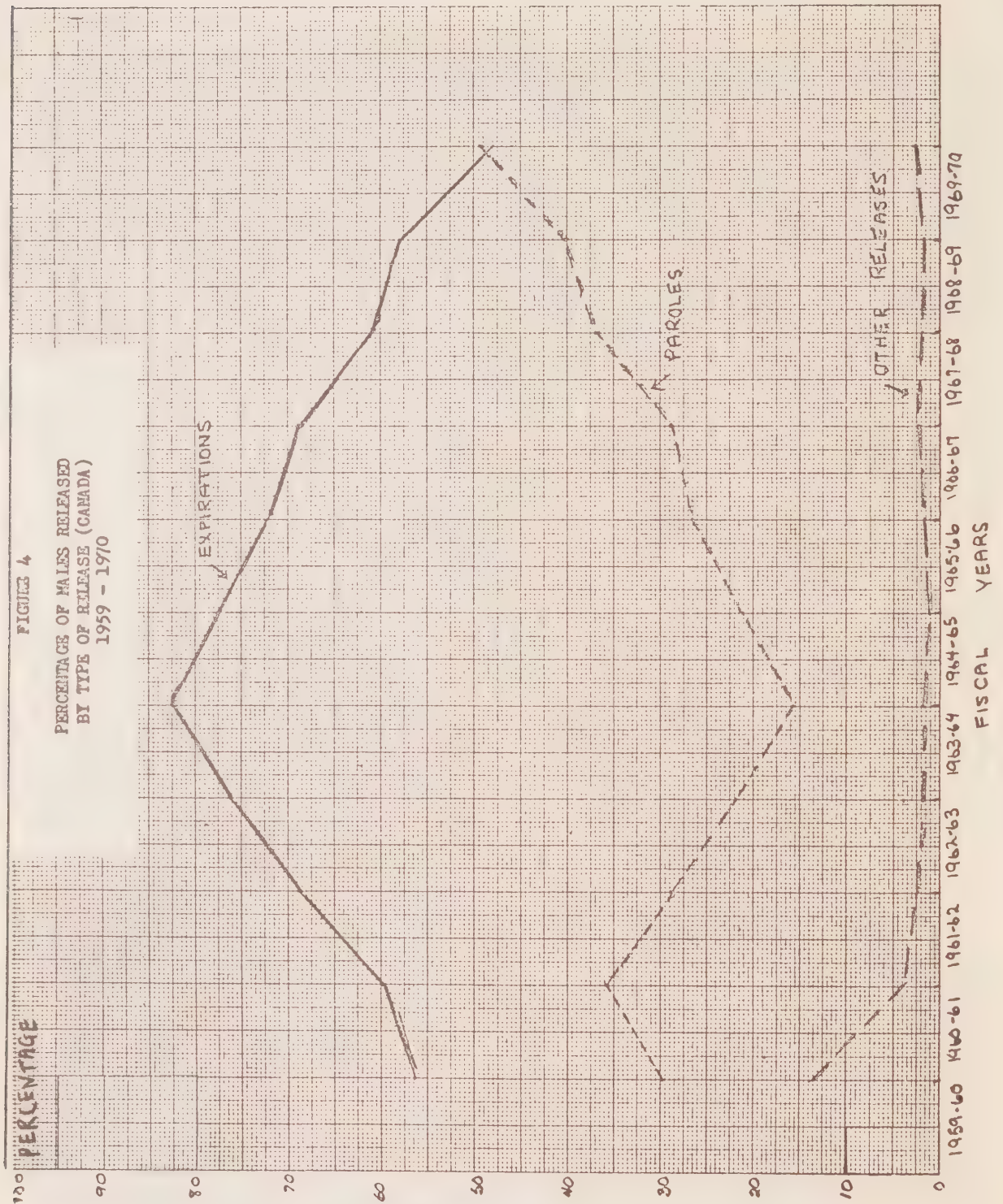


TABLE I
NATIONAL PAROLE BOARD - COMPARATIVE STATISTICS RE PAROLE DECISIONS AS OF JANUARY 31, 1972

Year	PAROLE DENIED		PAROLE GRANTED								PAROLE VIOLATED								MAND. SUP'VN		
	Cases Reviewed	A.P.R. plied	Ordinary	Short	Re-Par.	Fed.	Prov.	Total	*** Day	*** Dep'n & Vol. Dep.	REVOKED			RE-PAROLE GRANTED			NO RE-PAROLE			Total Parole Viola-tions	
											Fed.	Prov.	Tot.	Fed.	Prov.	Tot.	Fed.	Prov.	Tot.		
1972	(1,420)	(41)	(307)	(1)	(9)	(155)	(162)	(317)	(82)	(10)	(27)	(17)	(44)	(6)	(3)	(9)	(85)	(26)	(111)	(164)	
1971	17,000 (1,027)	464 (55)	2,288 (121)	4,714 (250)	35 (7)	216 (14)	2,380 (149)	2,585 (216)	4,965 (365)	1,185 (84)	128 (10)	249 (24)	118 (17)	367 (41)	145 (9)	71 (5)	216 (14)	631 (37)	295 (21)	926 (58)	1,509 (113)
1970	15,141 (1,119)	809 (99)	1,762 (121)	4,996 (298)	64 (10)	54	2,852 (164)	3,071 (199)	5,923 (363)	698 (41)	111 (14)	240 (7)	125 (6)	365 (13)	40	14	54	382 (23)	203 (19)	585 (42)	1,004 (55)
1969	14,583 (1,160)	990 (108)	1,949 (247)	4,066 (248)	175 (10)		1,720 (104)	3,062 (192)	4,782 (296)	474	67	122	90	212	67		211	128	339	551	
1968	13,297 (1,052)	1,161 (144)	2,573 (214)	3,027 (232)	153 (7)		1,331 (109)	2,187 (145)	3,518 (254)	258	80	89	87	176	114		114	92	206	382	
1967	11,896 (831)	1,313 (127)	2,760 (220)	2,496 (153)	145 (7)		1,061 (54)	1,760 (125)	2,821 (179)	115	65	(14)	(5)	(19)	(4)		(4)	(5)	(9)	151	292
1966	10,431 (799)	1,496 (136)	2,868 (296)	2,067 (109)	86 (2)		909	1,382	2,291 (114)	101	37			127					116	243	
1965	10,968 (854)	1,829 (134)	3,696 (264)	1,776 (122)	102 (1)		822	1,170	1,992 (131)	87	27			107					85	192	
1964	9,932 (844)	1,875 (176)	3,830 (415)	1,528 (58)	123 (7)		653	1,101	1,754 (72)	66	37			111					95	206	
1963	9,560 (689)	1,738 (145)	3,945 (310)	1,519 (76)	169 (6)		663	1,126	1,789 (95)	64	37			122					114	236	
1962	9,048 (754)	1,384 (158)	3,701 (333)	1,592 (102)	168 (2)		885	987	1,872 (105)	83	29			97					114	211	

- REVOKED 2,141
 - 5,555
 - FORFEITED 3,414

TOTAL PAROLES GRANTED FOR 155 MONTHS - 38,884 TOTAL PAROLES VIOLATED FOR 155 MONTHS
 - REVOKED 2,141 - 5,555
 - FORFEITED 3,414

TABLE 2
MALE INMATES ON REGISTER - ADMISSIONS AND RELEASES FROM PENITENTIARIES BY TYPE OF RELEASE 1959 TO 1970

Year	Males on Register April 1	Admissions	Total Releases	Inmates on Register March 31	Difference	Released by Expiration		Released by Parole		Other Releases	
						No.	%	No.	%	No.	%
1959-60	6,181	3,332	3,290	6,219	38	1,846	56.10	985	29.93	459	13.95
1960-61	6,219	3,272	2,871	6,614	401	1,714	59.70	1,031	35.91	126	4.38
1961-62	6,614	3,331	2,915	7,030	416	2,008	68.88	837	28.71	70	2.40
1962-63	7,030	3,656	3,594	7,092	62	2,739	76.21	786	21.86	69	1.91
1963-64	7,092	3,816	3,391	7,517	425	2,799	82.54	535	15.77	57	1.68
1964-65	7,517	3,621	3,739	7,399	-118	2,902	77.61	796	21.29	41	1.09
1965-66	7,399	3,514	3,598	7,315	-84	2,594	72.10	950	26.40	54	1.50
1966-67	7,315	3,401	3,661	7,055	-260	2,525	69.00	1,055	28.82	81	2.21
1967-68	7,055	3,433	3,571	6,917	-138	2,180	61.04	1,328	37.18	63	1.76
1968-69	6,917	3,738	3,646	7,009	92	2,119	58.11	1,466	40.21	61	1.67
1969-70	7,009	4,180	3,950	7,239	230	1,896	48.00	1,947	49.29	107	2.70
1970-71	7,239										

TABLE 3
RATES OF PENITENTIARY POPULATION TURNOVER AS A PERCENTAGE OF MALE INMATE POPULATION
ON REGISTER AS OF APRIL 1, 1959 TO 1970

Fiscal Year	On Reg. Apr. 1	Expirations	% of on Reg. Apr. 1	Paroles	% of on Reg. Apr. 1	Total Expirations & Paroles	% of on Reg. Apr. 1	Total Releases	% of on Reg. Apr. 1
1959-60	6,181	1,846	29.86	985	15.93	2,831	45.80	3,290	53.22
1960-61	6,219	1,714	27.56	1,031	16.57	2,745	44.13	2,871	46.16
1961-62	6,614	2,008	30.35	837	12.65	2,845	43.01	2,915	44.07
1962-63	7,030	2,739	38.96	786	11.18	3,525	50.14	3,594	51.12
1963-64	7,092	2,799	39.46	535	7.54	3,334	47.01	3,391	47.81
1964-65	7,517	2,902	38.60	796	10.6	3,698	49.19	3,739	49.74
1965-66	7,399	2,594	35.05	950	12.8	3,544	47.84	3,598	48.62
1966-67	7,315	2,525	34.51	1,055	14.4	3,580	48.94	3,661	50.04
1967-68	7,055	2,180	30.90	1,328	18.8	3,508	49.72	3,571	50.61
1968-69	6,917	2,119	30.63	1,466	21.19	3,585	51.82	3,646	52.71
1969-70	7,009	1,896	27.05	1,947	27.77	3,843	54.82	3,950	56.35

TABLE 4

Frequency and Degree of Recidivism After Release
from a Federal Penitentiary over 10-year period

Degree of Recidivism	Frequency of Recidivism by Degree	Percentages
I	172	69.92
II	118	47.97
III	78	31.71
IV	42	17.07
V	30	12.20
VI	16	6.50
VII	9	3.72
VIII	7	2.89
IX	4	1.65
X	2	.83
XI	1	.41

TABLE 5

Sentence of the Court for each Degree of Recidivism

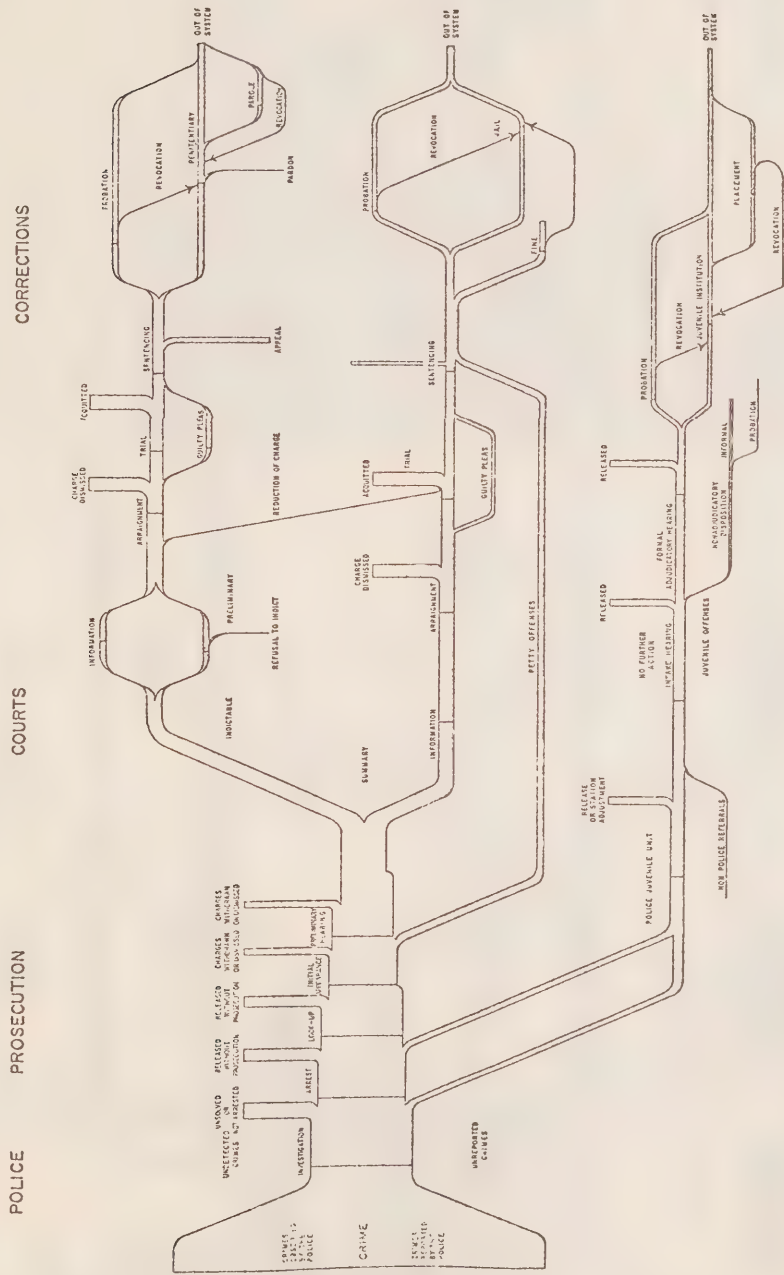
Degree of Recidivism	FINE		SUSPENDED SENTENCE		PRISON		PENITENTIARY	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
I	12	4.96	14	5.79	55	22.73	91	37.19
II	16	6.61	4	1.65	44	18.18	54	22.73
III	9	3.72	3	1.24	38	15.70	28	11.57
IV	2	.83	4	1.65	27	11.16	9	3.72
V	3	1.24	2	.83	14	5.79	11	4.55
VI	2	.83	1	.41	8	3.31	5	2.07
VII	4	1.65	0	0.00	4	1.65	1	.41
VIII	2	.83	0	0.00	4	1.65	1	.41
IX	0	0.00	0	0.00	3	1.24	1	.41
X	0	0.00	0	0.00	2	.83	0	0.00
XI	0	0.00	0	0.00	1	.41	0	0.00
Total	50		28		200		201	

TABLE 6
Types and Frequency of Crimes committed by 172 Recidivists
During a 10-Year Exposure Period

[illegible]

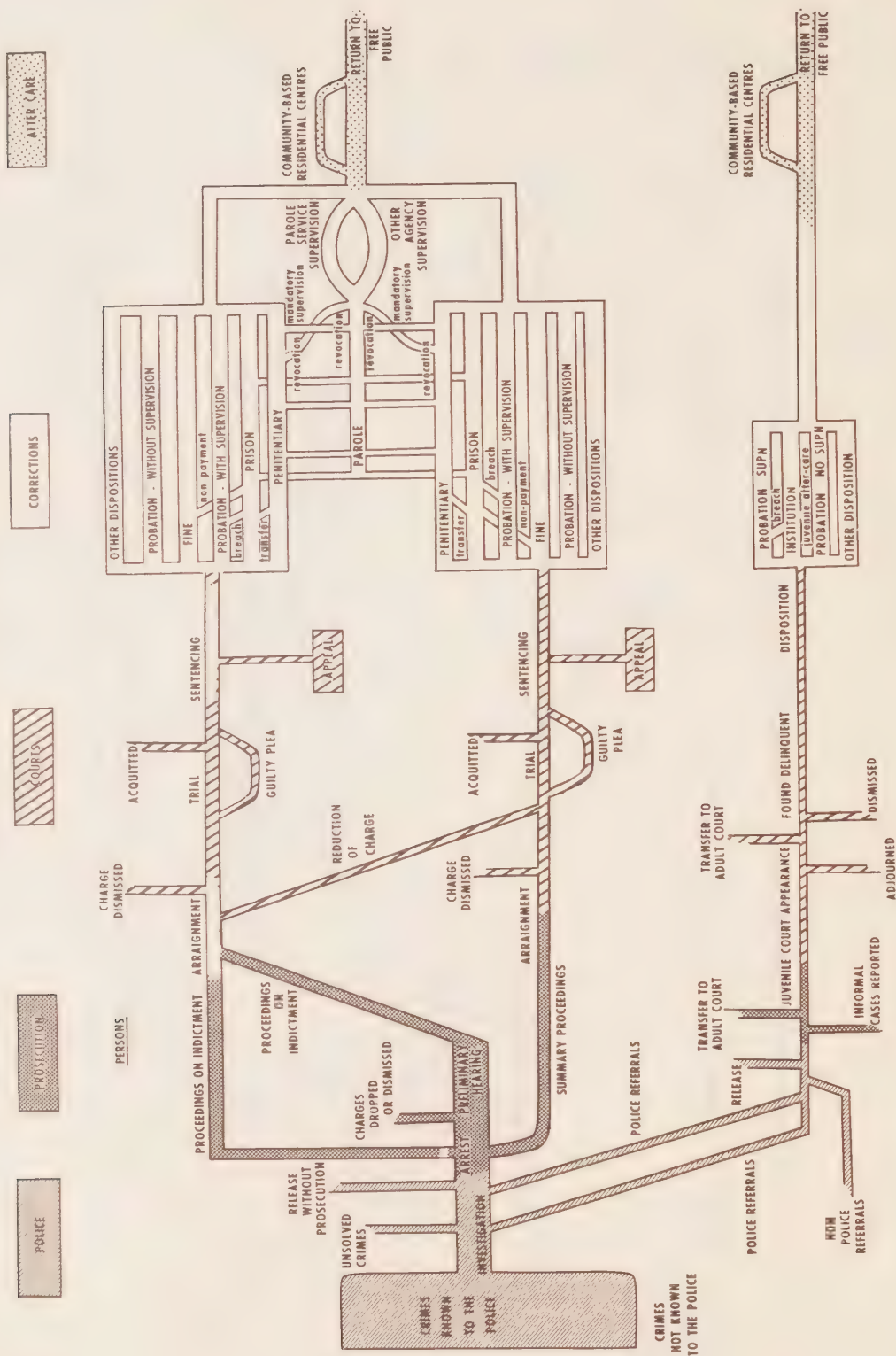
CHART - I

FLOW OF PERSONS THROUGH JUDICIAL PROCESS

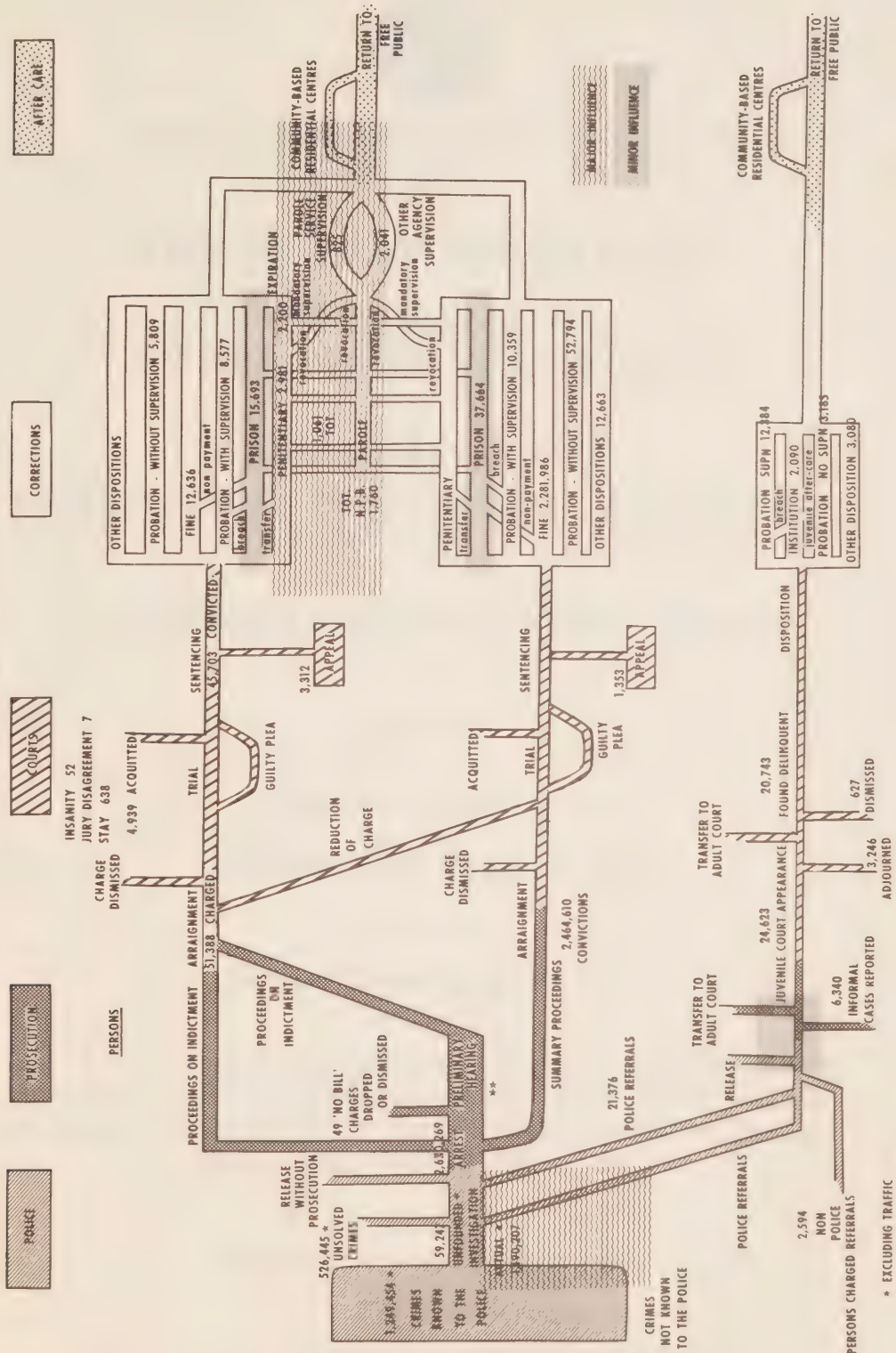


APPENDIX «B»

AN OVERVIEW OF THE CRIMINAL JUSTICE AGGREGATE IN CANADA



1967

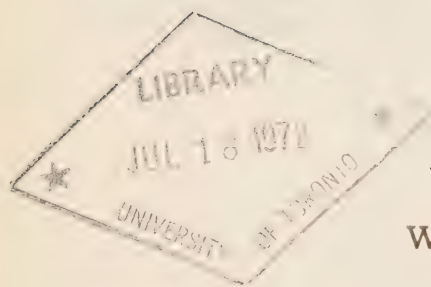




FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT
1972

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable J. HARPER PROWSE, *Chairman*



Issue No. 8

THURSDAY, JUNE 1, 1972
WEDNESDAY, JUNE 14, 1972

Complete Proceedings on Bill C-2
intituled:

“An Act to amend the Criminal Code and to make related
amendments to the Criminal Code 1967 Amendment Act, the
Criminal Records Act, the National Defence Act, the Parole
Act and the Visiting Forces Act”

REPORT OF THE COMMITTEE

(Witnesses and Appendices—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*

The Honourable Senators:

Argue	Lang
Buckwold	Langlois
Burchill	Lapointe
Choquette	Macdonald
Croll	*Martin
Eudes	McGrand
Everett	McIlraith
Fergusson	Prowse
*Flynn	Quart
Fournier (<i>de Lanaudière</i>)	Sullivan
Goldenberg	Thompson
Gouin	Walker
Haig	White
Hastings	Williams
Hayden	Yuzyk
Laird	

**Ex Officio Members*

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, May 31, 1972:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laird, seconded by the Honourable Senator Aird, for the second reading of the Bill C-2, intituled: “An Act to amend the Criminal Code and to make related amendments to the Criminal code 1967 Amendment Act, the Criminal Records Act, the National Defence Act, the Parole Act and the Visiting Forces Act”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Laird moved, seconded by the Honourable Senator Goldenberg, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 1, 1972.
(13)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 9.40 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Buckwold, Burchill, Eudes, Flynn, Goldenberg, Haig, Laird, Lapointe, Macdonald and Williams. (11)

Present but not of the Committee: The Honourable Senator Smith.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel, and Director of Committees.

The Committee proceeded to the examination of Bill C-2, intituled:

“An Act to amend the Criminal Code and to make related amendments to the Criminal Code 1967 Amendment Act, the Criminal Records Act, the National Defence Act, the Parole Act and the Visiting Forces Act”.

WITNESS:

Mr. D.H. Christie,
Assistant Deputy Attorney General,
Department of Justice.

On Motion of the Honourable Senator Goldenberg it was Resolved that all clauses of the Bill, with the exception of clause 4, be reported without amendment.

With respect to clause 4 of the Bill, dealing with the matter of “contempt of court”, it was Resolved that discussion of this matter be postponed to the next meeting of the Committee. It was agreed that the Honourable Senators Flynn and Goldenberg should contact possible witnesses to discuss this clause at the next meeting.

At 11.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Wednesday, June 14, 1972.
(15)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 9.30 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Argue, Choquette, Eudes, Fergusson, Flynn, Goldenberg, Hastings, Laird, Lapointe, Martin, McGrand and Quart—(13).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel, and Director of Committees.

The Committee continued its consideration of Bill C-2, intituled:

“An Act to amend the Criminal Code and to make related amendments to the Criminal Code 1967 Amendment Act, the Criminal Records Act, the National Defence Act, the Parole Act and the Visiting Forces Act”.

The following witnesses were heard in explanation of the Bill:

The Honourable Otto E. Lang,
Minister of Justice and
Attorney General of Canada.

Mr. D. S. Maxwell,
Deputy Minister of Justice and
Deputy Attorney General of Canada.

It was moved by the Honourable Senator Flynn that clause 4 of the Bill be struck out and replaced by the following clause:

“9. (1) Where a court, judge, justice or magistrate charges a person with a contempt of court committed in the face of the court, he shall describe the facts upon which he bases his charge and shall invite the person so accused to justify his behaviour at a sitting to take place not sooner than the following day.

(2) At any such sitting, the court, judge, justice or magistrate shall ensure that the facts upon which he charge is based and the justification offered are made part of the written record, and if, in his opinion, the person charged with the contempt failed to justify his behaviour, he may then summarily convict such person of the contempt.

(3) Where a person is summarily convicted for contempt of court, whether committed in the face of the court or otherwise, and punishment is imposed in respect thereof, that person may appeal

(a) from the conviction, or

(b) against the punishment imposed.

(4) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and, for the purposes of this section, the provisions of Part XVIII apply, *mutatis mutandis*.

(5) The hearing of such an appeal shall be given priority by the court of appeal."

The question being put, the Committee divided as follows:

Yeas—4 Nays—8

The motion was declared lost.

On motion of the Honourable Senator Flynn it was Resolved to print a letter dated June 12, 1972 received by the Honourable Senator Flynn from Mr. René Letarte of the Quebec Bar in the day's proceedings. It is printed as an Appendix.

It was Resolved to report the Bill without amendment.

At 10.30 a.m. the Committee adjourned.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Wednesday, June 14, 1972.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-2, intituled: "An Act to amend the Criminal Code and to make related amendments to the Criminal Code 1967 Amendment Act, the Criminal Records Act, the National Defence Act, the Parole Act and the Visiting Forces Act", has in obedience to the order of reference of May 31, 1972, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Harper Prowse,
Chairman.

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, June 1, 1972.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-2 to amend the Criminal Code and to make related amendments to the Criminal Code 1967 Amendment Act, the Criminal Records Act, the National Defence Act, the Parole Act and the Visiting Forces Act, met this day at 9.40 a.m. to give consideration to the bill.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Mr. D. H. Christie, Assistant Deputy Attorney General, Department of Justice, who is prepared to explain Bill C-2.

I suggest that we go through the bill clause by clause, commencing with clause 2(1), definition of "magistrate". Are there any questions? Is it agreed that clause 2(1) be accepted without amendment?

Hon. Senators: Agreed.

The Chairman: We come now to clause 2(2). Perhaps honourable senators would like to take notes on this, because some difficulty may be encountered in following it. It would perhaps save time if we do it this way. Clause 2(2) with clauses 3, 6 and 36, deals with the hijacking of aircraft and related matters. Are there any questions?

Clause 2(2)(e)(ii) deals with the pilot in command of an aircraft, and subclause 2(f) with officers and men of the Canadian Forces who are appointed for the purposes of section 134 of the National Defence Act. I take it that it also deals with the flying of aircraft.

Mr. D. H. Christie, Assistant Deputy Attorney General, Department of Justice: That is the next item.

The Chairman: Clause 3 deals with offences committed on aircraft.

We then move to clause 6, commencing on page 5 of the bill, which sets out a number of offences related to hijacking.

We then move to clause 36, on page 23 of the bill, relating to bail in these cases. If I move too quickly, honourable senators may ask me to slow down. I do not think we need waste time, if there are no problems. If there is no comment, could we entertain a motion with regard to those clauses?

Senator Laird: Mr. Chairman, as a matter of procedure, if no one objects, could we assume that we are agreed?

The Chairman: I have to put the question.

Senator Goldenberg: I move the adoption of those clauses.

Senator Macdonald: Before we adopt the clause dealing with bail, does it mean that the only person who can grant bail is a superior court judge?

Mr. Christie: It would have to be a superior court judge in relation to hijacking and those related offences. It is put on the same basis as, say, murder.

The Chairman: Are there any further questions?

A motion to adopt those clauses has already been moved by Senator Goldenberg. Is it agreed?

Hon. Senators: Agreed.

The Chairman: The next item is clause 2(2)(f). This clause gives certain officers of the Canadian Forces the powers of peace officers.

Are there any questions in relation to that clause?

Senator Goldenberg: I move that it be accepted.

The Chairman: Is it agreed?

Hon. Senators: Agreed.

The Chairman: Clause 4, on page 5 of the bill, deals with section 9(1) of the act. It repeals section 9(1) of the act and substitutes therefor a provision allowing for an appeal both from conviction and sentence in relation to contempt of court committed in the face of the court.

Senator Macdonald: That is the controversial one?

The Chairman: That is the one there has been some discussion on. Perhaps I should ask Mr. Christie to explain it to the committee.

Mr. Christie: Under the existing law there are two types of contempt, one committed in the face of the court and the other committed outside of the court. When the contempt is not in the face of the court there is an appeal both as to conviction and sentence, but if the contempt is committed in the face of the court the right of appeal relates to sentence only. This amendment will give a right of appeal in relation to both conviction and sentence in the event of a conviction for contempt in the face of the court.

Senator Macdonald: I might say, Mr. Christie, that there was considerable discussion on that point in the chamber last night. Do you feel it is a practical amendment?

We have heard about some of these cases in Montreal where individuals seem to be deliberately trying to obstruct the court. What would happen if the judge in one of those courts decided to hold someone in contempt and the person held in contempt said that he would appeal it? Would the trial then proceeding have to stop until the appeal process on the charge of contempt of court was completed, or what would happen?

Mr. Christie: I think the trial would go on; and at the termination of the trial, presumably, the appeal, if one was lodged, would take place in the ordinary course.

I might add that this amendment is supported by resolution of the Canadian Bar Association at its 1971 meeting.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Was it recommended by the criminal law section of the Commission on Uniformity of Legislation?

Mr. Christie: No, they did not recommend it.

Senator Lapointe: Do you think this amendment would lead to abuses by people, especially in the Province of Quebec, where they are a bit more fiery, let us say?

Mr. Christie: It is hard to say with precision . . .

Senator Lapointe: We heard that opinion given last night in the Senate by members of the opposition.

Mr. Christie: We hope that it would not. A conviction of contempt in the face of the court can be a very serious matter, and the argument is that it is serious enough, compared to other rights of appeal, to itself warrant a right of appeal.

The Chairman: Senator Flynn, we are discussing the clause which provides for the right of appeal from contempt committed in the face of the court, on which you spoke yesterday.

Senator Flynn: I am wondering whether you intend, Mr. Chairman, to get the views of the Canadian Bar Association or the Quebec Bar Association on this particular amendment.

I realize that the witness has explained the purpose of the amendment, but is he in a position to relate to us the views expressed by the Bar associations regarding this amendment?

Mr. Christie: As I mentioned a moment ago, senator, the Canadian Bar Association adopted a resolution at its 1971 meeting favouring the granting of a right of appeal from conviction of contempt in the face of the court.

Senator Flynn: In what words?

Mr. Christie: In the substance of the amendment.

Senator Flynn: Only an appeal, yes. However, the point I made last night in the chamber was that contempt of court committed in the face of the court is not always easy to record, and I am

wondering how the appeal court would be able to deal with such a charge. Contempt of court outside of the court, of course, proceeds in the ordinary way: witnesses are called, there is a transcript and the court can make its judgment on the basis of the record. However, you can have contempt in the face of the court which is not or cannot be recorded, such as a gesture or something of that nature, and I am wondering how the appeal court is going to be in a position to judge the decision on the part of the judge or court offended to warrant the charge of contempt. This could be a problem.

Mr. Christie: Of course, if the contempt consists of spoken words it will be on the record.

Senator Flynn: Yes, if it consists of spoken words.

Mr. Christie: If it is contempt by gesture, it may well be that evidence will have to be adduced.

Senator Flynn: Before the appeal court?

Mr. Christie: Yes. Perhaps the clerk or other witnesses who saw the gesture could be called.

Senator Flynn: If the accused appealed the conviction he would probably have to testify; and, if so, the judge, in turn, will have to testify. Can you imagine a situation like that?

Mr. Christie: The judge may not necessarily have to testify. If the act of contempt was by a gesture, I think there would be other witnesses who could be called to testify as to the nature of the gesture. There is nothing completely novel about appeal courts hearing evidence.

Senator Flynn: No, I agree with that; that precedent has long been established. However, this process could put the judge in the position of a litigant before the appeal court. That is what is going to happen in this type of case. The judge will become a party to the action.

Senator Macdonald: Has there been any intimation, either formally or informally, from any of the judges' associations?

Mr. Christie: Not from any judges' associations. I believe the minister has received an indication from one or perhaps more judges that they do not favour this amendment. On the other hand, the Quebec Bar Association does favour it.

Senator Goldenberg: Have you a resolution from the Quebec Bar Association to that effect?

Mr. Christie: No, but I believe we have received a letter from the Bâtonnier.

Senator Goldenberg: I would be interested in seeing the wording of that letter, if I could.

Mr. Christie: Subject to the minister's approval.

Senator Macdonald: If this amendment is passed, a judge could very easily lose control of his court.

Senator Flynn: Senator Connolly quoted from that letter from the Quebec Bar Association in the chamber last night. It might appear that the Quebec Bar Association favours the right of appeal from the decision in cases of contempt in the face of the court, but it does not necessarily mean that it accepts the solution which is provided for under this bill. If I remember correctly, I do not think we can necessarily draw that conclusion from what was quoted by Senator Connolly.

Mr. Christie: The letter from the Quebec Bar Association, as I recall it, did not specifically approve of any particular wording, but I believe they approved of this clause in principle.

Was that a recent letter Senator Connolly was quoting from?

Senator Flynn: I do not remember.

Mr. Christie: It sounds familiar.

Senator Flynn: I think he read it a little too quickly for us to assess exactly what it meant. I have had many representations in this respect from members of the judiciary.

Article 52 of the Code of Civil Procedures of the Province of Quebec says that where the contempt of court is committed in the face of the court the judge may render sentence immediately, providing that the accused has been afforded the occasion to justify his conduct. It seems to me that if we had that type of provision tied in with this principle, it would probably provide a better record for the court of appeal, as the judge, in the case of contempt of court by gesture, would have to ask the offender why he should not be found in contempt of the court. In that instance the reply would be on the record and the decision would then follow.

Mr. Christie: I would have thought that kind of fundamental justice would almost be inherent. I do not think you would have to spell that out.

Senator Flynn: It is not mentioned in the Code. In the case I was speaking of, there was a refusal to reply to a question by the crown attorney. However, there have been other cases where the rule that I suggest should be coupled with the right to appeal from the decision.

Mr. Christie: The Law Reform Commission of Canada, under the chairmanship of Mr. Justice Hartt, is taking a look at the Code from beginning to end, and undoubtedly one of the areas they will be looking at is that of contempt of court, which is a difficult area. For example, we have had representations that the judge who is the object of the contempt should not be in a position to try the case himself, that some other judge should be brought in to try the case and impose sentence.

Senator Flynn: You would suspend the trial to have the trial by the other judge of the offence of contempt?

Mr. Christie: No, I do not say that.

Senator Flynn: How would you do it?

Mr. Christie: It is not our suggestion. I am saying this has been represented to us, that the object of the contempt should not sit in judgment and pass sentence. Of course, that has not been adopted in this bill.

Senator Goldenberg: Is that not the case in the federal courts of the United States? The judge has to cite the person charged before another judge.

Senator Flynn: Do they suspend the trial? It would be easy to provoke an adjournment of the trial merely by committing contempt, because the judge would have to suspend the trial and cite the accused before another judge, then wait until the decision is rendered before continuing with the trial. You would never see the end of it.

Senator Goldenberg: That was the next question I was going to ask Mr. Christie. I would like to have his views on that.

Mr. Christie: I would not think you would have to suspend the trial. You could just indicate that at the termination of the trial the person would be cited for contempt, and the contempt would be dealt with at that time. Judge Hoffman did that in the United States.

Senator Goldenberg: He did that and he was recently overruled by a decision which held that he should have cited them before another judge.

Mr. Christie: You mentioned American law. I understand that there is a constitutional argument in the United States that you are entitled to a trial by judge and jury on a citation for contempt, so this is a big field. For the moment the bill tries to give an immediate appeal.

Senator Flynn: Are you not going a bit too quickly? You say that the Law Reform Commission is studying the problem. Why not wait until we hear from the Law Reform Commission? We may be adding a right of appeal here, favouring the accused against the judge; there is no doubt about that. If, after we have heard a report from the Law Reform Commission or other interested bodies, we find that we have been going too far, it may not be easy to backtrack. I do not see the urgency of providing the appeal without having studied all the implications of the amendment that is before us.

The Chairman: Is there any group we might call as witnesses?

Senator Flynn: That is what I suggested yesterday. I would not like the bill to be reported today.

The Chairman: It does not have to be.

Senator Flynn: No, there is no rush. I spoke to the Bâtonnier of the Bar of the Quebec district about it and he indicated that the Bar might want to appear before us, if it was invited to do so. If the

committee would provide an opportunity for that next week, for instance, we could find out whether they are willing to appear.

The Chairman: There is no objection to a mention to that effect, that we put this over to a date next Wednesday to deal with this clause.

Senator Laird: To speed things up, and as the sponsor of the bill, I move that we suspend consideration of this clause until you, Mr. Chairman, or someone delegated by you, determines, whether through Senator Flynn or otherwise, whether or not some organization in the Province of Quebec wants to be heard. I think we should fix a deadline of, let us say, next Wednesday.

Senator Flynn: They could let us know by telephone, or otherwise, whether they want to appear.

Senator Burchill: Is that confined to Quebec?

Senator Flynn: No, not at all.

Senator Laird: I should not have said that, except that the complaints are from there.

Senator Flynn: The actual problem is there. I do not think there are any systematic views.

Senator Burchill: I was wondering whether there had been any pressure from any group wanting this amendment.

Mr. Christie: We have received representations. I have already mentioned that the Canadian Bar Association has passed a resolution indicating that there should be an appeal under these circumstances, and others have made representations.

Senator Goldenberg: The matter has been under discussion for a long time. After all, under the present system the judge acts as prosecutor, judge and jury, which is contrary to our principles of justice. At the same time, we have to remember that the purpose is to preserve and protect the authority of the courts. Now not only the authority of the courts—but also the legitimacy of the courts—is being attacked. That is why I think it is important that we give further consideration to this amendment.

Senator Flynn: We are all in favour of the principle of appeal, but I want to find out what the implications would be if we were merely to provide for that.

The Chairman: We have a motion that this clause stand, but that we consider the rest of the bill. May I, as chairman, designate Senator Flynn and Senator Goldenberg to get in touch with the persons they have been talking to, and make such arrangements as may be necessary to have anyone who wishes to make representations invited to appear before us next Wednesday at 10 a.m.?

Senator Goldenberg: I will meet with Senator Flynn during the day and we will talk about it.

Senator Flynn: Yes.

The Chairman: Is that agreeable?

Senator Flynn: From the conversations we had, we thought the committee would sit only next week and that they would probably be warned that the committee would be willing to hear them.

The Chairman: Is that agreeable?

Hon. Senators: Agreed.

Mr. Hopkins: Mr. Chairman, may I point out that I notice for the first time that there is a technical error in the clause, in that it starts off:

4. Subsection 9(1) of the said Act is repealed . . .

It should be “section 9(1)”, should it not?

Mr. Christie: Where is that?

Mr. Hopkins: It is on page 5, clause 4. That is obviously a typographical error, and I might be able to correct it; but I thought it should be pointed out to the committee. This is the revised version here, as passed by the House of Commons. In the first reading copy in the Commons it is correct.

Mr. Christie: It is correct as it is there.

Mr. Hopkins: As passed by the House of Commons?

Mr. Christie: Yes. That is the new approach they are using. Instead of saying “subsection (1) of section 9”, they say, “subsection 9(1).”

Mr. Hopkins: That is the new way of doing it. I am sorry.

Senator Laird: So it is all right?

Mr. Hopkins: Yes.

The Chairman: The only thing we have to do now is to issue the invitation to interested parties for 10 a.m. next Wednesday. Is that agreed?

Hon. Senators: Agreed.

Senator Goldenberg: When you say Wednesday, Mr. Chairman, is it because Wednesday is the most convenient day?

The Chairman: We can make it Tuesday, if you wish?

Senator Goldenberg: It so happens that for me—and I do not think the committee should act according to my convenience—Wednesday morning becomes almost impossible.

The Chairman: How about Tuesday, or Thursday?

Senator Flynn: Thursday morning.

Senator Goldenberg: Yes.

Senator Flynn: If we must find a solution, that is all right.

The Chairman: Is Thursday morning agreeable?

Hon. Senators: Agreed.

Senator Goldenberg: Thank you.

The Chairman: Clause 5 deals with the repeal of section 56, searching for deserters from the armed forces.

Mr. Christie: That is a purely technical amendment. The companion section was repealed in 1951 and this section is redundant, so we are getting rid of it.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 7. There is a group of related clauses on this point—clauses 7, 22, 40(2) and 40(3).

Clause 7 refers to section 118 of the act. Clause 22 refers to section 246(2) of the act. Clause 40(2) refers to section 483(c)(i) of the act. Clause 40(3) refers to section 483(c)(viii) and (ix) of the present act.

Can you explain this to us? There are assaults and obstructing peace officers.

Mr. Christie: Very briefly, the position under the existing law is that the offence of obstructing a peace officer or assaulting him is an indictable offence, punishable by a maximum of two years in prison. At the suggestion of the Canadian Bar Association, the offence of obstructing a police officer is going to be made optional, that is, it could be proceeded with by way of indictment, and the penalty will still be a maximum of two years; or by way of summary conviction. Of course, as you gentlemen know, a summary conviction generally carries a maximum of six months or \$500 or both. This would allow summary conviction proceedings in relation to the minor obstructing cases. That is a recommendation of the Canadian Bar Association.

The other amendment would make the offence of assaulting a peace officer punishable by a maximum of five years in prison, or it could also be punishable on summary conviction.

So, if you have a serious case, you go by way of indictment, with a maximum of five years. That is an increase from two years. In the less serious cases, you go by way of summary conviction.

In either case, under the existing law, magistrates have absolute jurisdiction to hear these cases, notwithstanding the fact that they are indictable.

The result of the amendment would be that if the Crown chooses to go by way of indictment rather than by way of summary conviction, the accused will have his election in the normal way.

The Chairman: Are there any questions? Is it agreed?

Hon. Senators: Agreed.

The Chairman: The next clause is clause 8, "Obstructing justice" and "Public mischief". Since these are new sections, can you explain them to us.

Mr. Christie: The result of those provisions will be to increase the maximum penalty for obstructing justice, except in relation to the indemnification of sureties, from a maximum of two years to a maximum of ten years.

This has the support of the Conference of the Commissioners on Uniformity of Legislation of Canada.

I might say that there is special concern these days in relation to the threatening of witnesses and the bribing or attempting to bribe jurors.

Also, there are a number of offences in relation to sending peace officers off on spurious investigations. To that, we are adding the offence of a person who for one reason or another tries to make out that he is dead, usually for insurance purposes. He might run his car into the Fraser River—that is an actual example—leave clothing, and so on, around and put the police into a mighty investigation, bringing in divers and so on. It was found that was not covered, and that will be covered by this proposal.

The Chairman: There also is a change, I think, that instead of just obstructing or attempting to defeat the course of justice, it is provided here under section 127(2), "any judicial proceeding".

Mr. Christie: There is no change there.

The Chairman: Were those words there?

Mr. Christie: Yes.

The Chairman: Are there any questions? Is it agreed?

Hon. Senators: Agreed.

The Chairman: Clause 9 deals with imprisonment with respect to unlawful escape. That is on page 10 of the bill.

Mr. Christie: Actually, all this does is to clarify what constitutes the remanet of a sentence that a person has to serve after he escapes. Because of some legislation in regard to the Parole Board and the wording of the present Criminal Code, there has been a difficulty where there has been a number of sentences outstanding. This is really almost a mathematical clarification of how to calculate the *remanet*.

Senator Macdonald: Is it not the case that he used to have to serve the unearned portion of the remission, too?

Senator Laird: I imagine that should be tied in with clause 74, should it not, Mr. Christie?

Mr. Christie: No. Clause 74 deals with the elimination of corporal punishment.

Senator Laird: I am looking at clause 74 of Bill C-2, an amendment to section 22(1).

Mr. Christie: Under the existing law, section 22(1) provides that the board may, upon application, and subject to regulations, et cetera, revoke or suspend any order made under the Criminal Code. Then the words now in there are in relation to the sentence of whipping. But we are doing away with whipping, so we eliminate reference to it from that provision.

Senator Laird: Very well.

The Chairman: Are we happy with clause 9?

Hon. Senators: Agreed.

The Chairman: Then we have clauses 10, 24, 53, 59, 70 and 74. Clause 53 deals with appeals, and clause 74 deals with motor vehicles. That is the one we just spoke about. All these amendments have the effect of removing whipping or corporal punishment.

Senator Flynn: Would you list the offences for which one can receive corporal punishment?

Mr. Christie: The offence for which you can now be sentenced to be whipped are: incest; being in possession of an offensive weapon while breaking and entering; rape; attempt to commit rape; assault with intent to commit buggery; indecent assault by a male on another male person; choking another person or administering a stupefying drug to assist in the commission of an indictable offence; robbery; sexual intercourse with a female under 14 years of age; and indecent assault on a female.

Senator Flynn: With respect to those offences we are abolishing corporal punishment, but are there any offences left that are still punishable by corporal punishment after these amendments are passed?

The Chairman: No.

Senator Flynn: In other words, you are deleting corporal punishment completely?

Mr. Christie: The result of these amendments will be to do away with corporal punishment as a judicial sentence in any circumstance.

Senator Flynn: In effect, that is a principle that will be accepted by Parliament if we pass this bill?

Mr. Christie: That is correct.

The Chairman: There will no longer be the possibility of anyone being whipped for any offence.

Senator Flynn: Mr. Chairman, I agree with these amendments. I had not realized that those were the sole offences for which

corporal punishment was meted out, and it had seemed to me that in the case of cold-blooded murder corporal punishment might be a good thing. Although we cannot preserve it, since it is not provided for, perhaps we should insert such a provision in the Code. At any rate, I am in agreement with these cases individually, although I am not necessarily prepared to accept that corporal punishment should disappear forever.

Senator Macdonald: As a matter of fact, Mr. Christie, it has been only rarely that corporal punishment has been imposed in recent years, is that not so?

Senator Flynn: In these cases, yes.

Mr. Christie: I have some statistics from Statistics Canada for the years 1964 to 1968. They are not necessarily the best figures, but they are the latest I could get from D.B.S. In 1964, 18 times; 1965, 14 times; 1966, 13 times; 1967, 10 times; 1968, 6 times.

The Chairman: Was corporal punishment actually administered in each of those cases?

Mr. Christie: In 1964 there were actually 22 such punishments carried out. The reason for that figure being different from the previous figure for 1964, that I had mentioned, is that there must have been a carry-over from 1963. In 1965 corporal punishment was administered three times; in 1966, three times; in 1967, five times; and in 1968, five times.

Senator Goldenberg: Was there not a recent case in Hamilton? What about that case?

Senator Macdonald: The Parole Board has stopped that.

The Chairman: The Parole Board has the jurisdiction to interfere in these cases.

Senator Macdonald: Yes, the Parole Board has the authority there.

Mr. Christie: The Parole Board, as pointed out by Senator Macdonald, can remit these sentences upon application for remittance. The performance of the Parole Board from 1964 to 1968 is interesting. In 1964 they granted eight applications for remission and refused 13. In 1965 they granted none and refused none. Obviously, there were no applications. In 1966 they granted five and refused one. In 1967 they granted 12 and refused seven; while in 1968 they granted three and refused eight.

Of course, from 1968 to 1972 there has been an even further drift away from that kind of punishment.

The Chairman: May I have a motion with respect to those clauses?

Senator Macdonald: I so move.

Hon. Senators: Agreed.

The Chairman: Clause 11 deals with paragraph 171 (d) of the act. That paragraph is repealed and replaced by a substituting paragraph. This has to do with the disturbance of the peace and quiet of the occupants of a dwelling-house. Is there any particular change in that that we should know about?

Mr. Christie: Well, under the existing law, section 171 of the Code says that:

Every one who . . .

(d) disturbs the peace and quiet of the occupants of a dwelling-house by discharging firearms or by other disorderly conduct in a public place,

is guilty of an offence punishable on summary conviction.

That section gives protection to people in a single-dwelling unit, but what has happened in recent times is that in high-rise apartments and other apartments similar disturbances and commotions and other trouble are caused in hallways and in locker rooms. These places are not public places, of course, so it is in order to cover the modern apartment dweller and to give him the same kind of protection that the single unit dweller has that the amendment is being made. I might say that the amendment originated with the Canadian Association of Chiefs of Police.

Senator Macdonald: As it reads now the section says, "who, not being an occupant of a dwelling house". Does this mean that the occupant can go around discharging firearms?

Mr. Christie: That is correct. That was a deliberate policy decision.

The Chairman: It may be that the occupant is covered under another section.

Senator Laird: That takes a load off my mind; I live in an apartment.

The Chairman: Shall we pass clause 11, and leave the occupants of dwelling houses at peace?

Hon. Senators: Agreed.

The Chairman: Clauses 12, 13 and 15 deal with vagrancy and soliciting for the purposes of prostitution. Are there any questions? **Mr. Christie,** I understand the amendments here get rid of vagrancy. Is that correct?

Mr. Christie: Section 175 now provides that:

Every one commits vagrancy who

(a) not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found;

(b) begs from door to door or in a public place;

(c) being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself;

So far as the first part of that is concerned—wandering abroad without being able to justify your presence—it is considered that that is too vague for the purposes of the criminal law. So far as begging from door to door is concerned, it was the view that that is not really a proper subject matter for the Criminal Code. It is a problem which could be dealt with by provincial legislation or municipal bylaw. As far as prostitution is concerned, it was thought that what should be done was to nail it down and make it a specific offence to solicit—and this includes either men or women—in a public place for the purposes of prostitution. The language is really taken from the Street Offences Act (1959), in the United Kingdom.

Senator Macdonald: In Nova Scotia, under the Towns Act there is a provision which is practically similar to the vagrancy section in the Criminal Code. It probably was never used very much, but now that it is taken out of the Criminal Code, it probably could be in operation.

Mr. Christie: That is a possibility. Now that these sections are removed from the Criminal Code any municipal or provincial legislation that might be applicable may be brought into play, and this would probably remove some constitutional argument too.

Senator Flynn: It could not be considered as criminal law any more if it is not in the Criminal Code.

Mr. Hopkins: It would strengthen the validity of the provincial legislation.

Senator Macdonald: It also gives a police officer the power to arrest without warrant on these minor offences, and so he does not have to bring the accused before a magistrate within 24 hours, which seems to be in direct conflict with the Bail Reform Act which we passed here some time ago.

The Chairman: It is used chiefly for harassment purposes—and very successfully too.

Senator Goldenberg: I must say that I am very happy that we are finally ridding ourselves of the phrase "without visible means of support".

Senator Laird: In that connection, I can think of occasions when the Government Leader would have been arrested.

The Chairman: That note having been struck, I take it that clauses 12, 13 and 15 are passed?

Hon. Senators: Agreed.

The Chairman: Coming then to clause 14, at the top of page 12, we find that it deals with the case of a person who "lives wholly or in part on the avails of prostitution of another person".

Mr. Christie: That is just a technical amendment. Section 195(1)(j) and (k) now provide that:

Every one who . . .

(j) being a male person, lives wholly or in part on the avails of prostitution, or

(k) being a female person, lives wholly or in part on the avails of prostitution of another female person,

is guilty of an indictable offence . . .

Situations have been brought to our attention where it would have been proper to charge a man and a woman jointly with living off the avails of prostitution, but the joint charge could not be made because of the way the section was written. All we are doing is simply welding those two subsections together.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: Then we come to clause 16 which abolishes the offence of attempting to commit suicide. Shall this clause carry?

Hon. Senators: Agreed.

Senator Flynn: I remember that some years ago in the other place there was a debate about the Swiss island where somebody said that in the good old days they used to hang those who committed suicide. I was not at all sure that they simply meant that they used to hang the body or what exactly they meant.

The Chairman: They used to bury them in unhallowed ground and put a stake through their heart.

We come now to clause 17 which is an amendment to paragraph 237(1)(a) of the French version of the Criminal Code. I shall leave discussion of this to those better able to interpret it than I am.

Mr. Christie: In a word, all that does is to adjust the French language version in relation to the words, "he did not enter or mount the vehicle" in paragraph (a) of subsection (1) of section (237).

The Chairman: Shall this clause carry?

Hon. Senators: Agreed.

The Chairman: We come now to clause 18, dealing with orders prohibiting driving. This will bring into being a new section 238(1), and it is to be found at the top of page 13. Are there any questions on this?

Senator Macdonald: Perhaps Mr. Christie could tell us the import of that.

Mr. Christie: Under the law as it now exists a person can be prohibited from driving if he is convicted of any one of a number of offences. We are adding now to that list that if he drives when he is prohibited, a further order of prohibition can be made against him.

Secondly, there is a conflict of judicial authority as to whether or not orders of prohibition can be intermittent or absolute, and we are resolving that in favour of the proposition that they can be intermittent.

Senator Flynn: Some decisions have been rendered interpreting the present law as permitting the judge to restrict or prohibit a person from driving to periods after normal hours of work.

Mr. Christie: The British Columbia Court of Appeal said that you could have an intermittent order, but the Alberta Court of Appeal said that you could not.

Senator Buckwold: I notice there is no limitation on the length of time that a prohibition order should run. Is this intentional?

Mr. Christie: Oh yes, there are limitations, but they will be found in other sections.

The Chairman: There is an exception in 238 (1.1), under "(3.1)", and at the end of that we read, "... where that suspension or cancellation is inconsistent with an order made with respect to him under subsection (1)." Does that cover suspension in a situation such as exists in the Province of Alberta where it concerns financial responsibility? For example, if I have been involved in an accident and I have a judgment against me and I have not paid it, then the province can pay it out of the Unsatisfied Judgments Fund. But then, until I have made satisfactory arrangements for repaying them, I cannot get a driver's licence. Is that what this section covers?

Mr. Christie: No. It has nothing to do with that situation. This simply means that if there is an intermittent order made, and under the provincial law it is an absolute order, then the provincial law will have to be enforced under provincial legislation rather than the Code.

The Chairman: I see. Is that understood and agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: Then we come to clauses 19 and 20, dealing with the navigation of vessels and other nautical things.

Senator Flynn: Is this entirely new in as far as it relates to the dangerous operation of a vessel?

Mr. Christie: No. What we are doing there is simply this: First of all, we are bringing the description of Canadian waters in respect of which the offences that are now in the Code in relation to the navigation of vessels, and so on, in line with the description of Canadian waters in the Territorial Seas and Fishing Zones Act. We are trying to make all our legislation consistent in setting out what our waters are. The second point is that we are making it an offence to navigate a vessel in a dangerous manner over, as well as on, such waters. The reason for that is that we had an occasion reported to us where there was a hovercraft hovering over an area where children were swimming, and created an air pocket which seriously endangered the lives of the children because it made it difficult for them to surface.

We are making the breathalyzer provisions of the Criminal Code, which are now applicable to driving a motor vehicle, also applicable to operating vessels.

Senator Flynn: Even if you are paddling a canoe?

Mr. Christie: This was raised in the debates in the House of Commons. The fact is that you can have a real tragedy in a canoe.

Senator Flynn: I am aware of that.

The Chairman: And there are such every year. Are clauses 19 and 20 all right?

Hon. Senators: Agreed.

The Chairman: Clause 21, which deals with section 245 (2) of the act, increases the maximum penalty for assault causing bodily harm from two to five years.

Mr. Christie: Based on the recommendation of the Canadian Bar Association, the maximum penalty for assault causing bodily harm is being increased from two to five years. We received other representations as well from a Member of Parliament and from members of the judiciary. However, the law will be further changed. Under the law as it now exists when you proceed with this offence, which is an indictable offence, magistrates have absolute jurisdiction to try the case. Under the amendment if they choose to proceed by way of indictment, you have an election in the normal course.

The Chairman: The clause 40 portion deals with this.

Mr. Christie: Yes, that is correct.

Senator Macdonald: When you increase the penalties in certain instances, is that not going against the general trend? You are also decreasing penalties for certain offences.

Mr. Christie: I suppose it may be said there is a trend. However, I feel you have to look to the particular area with which you are dealing. As I have said, members of the judiciary have had vicious assault cases before them occasioning grievous bodily harm, and they have thought the maximum two-year penalty was inadequate. Some of these assaults are almost unbelievable.

Senator Flynn: There is a general trend, as Senator Macdonald has mentioned. However, in some cases, there is also a trend in the other direction.

The Chairman: There is no change in the minimum penalty. There is no minimum. It merely increases the maximum.

Is this clause agreeable, honourable senators?

Hon. Senators: Agreed.

The Chairman: Turning to clause 23—

Senator Flynn: This was an amendment suggested by Senator John M. Macdonald several years ago to increase the value of the stolen property from \$25 to \$200.

Senator Goldenberg: I feel Senator Macdonald's figure is conservative.

Senator Flynn: You would have jacked it higher?

Senator Goldenberg: Yes, I would have raised the figure.

The Chairman: Under clause 23, section 295 adds vessels as well as motor vehicles.

Mr. Christie: Some years ago the Criminal Code was amended to create an offence commonly known as joy-riding, which covered cases where young people would take a car for a time, but without permanently depriving the owner of its use. Under the law such offenders had to be charged with theft. They came out with a lesser offence, punishable by way of summary conviction known as joy-riding. All we are doing here is including young people who take a boat for a day or so and including this in the joy-riding provision. They will not be charged with an indictable offence, but will be dealt with summarily.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clauses 23, 28, 29, 40(1) and 41 increase the value of property from \$50 to \$200 in relation to offences of theft by false pretences. Are there any questions?

Senator Flynn: No, the Senate has approved that already. As a matter of fact, they have approved it twice.

The Chairman: Clauses 25 and 26 amend the law in relation to being in possession of housebreaking instruments. Are there any questions? There is a change in this clause.

Mr. Christie: Oh, yes.

The Chairman: The change is to the benefit of the accused.

Hon. Senators: Agreed.

The Chairman: Under clause 27, dealing with possession of stolen property, it is *prima facie* evidence to be in possession of a vehicle with obliterated serial numbers. Are there any questions?

Hon. Senators: Agreed.

The Chairman: Clause 30 amends the law in relation to mischief. Are there any questions?

Senator Buckwold: What are the changes in this clause?

Mr. Christie: Under subsection (1) of section 387 of the Code, "mischief" is defined as including obstructing, interrupting, interfering with the lawful use or enjoyment of property. This involves demonstrations, particularly those which take the form of a sit-in at a university or some other place. Under the law as it is now, these offences are indictable and punishable by imprisonment from 14 years down to five years. All we are doing is making them punishable by way of summary conviction as well. So, if you have a sit-in which you do not think warrants proceeding by way of indictment you can proceed summarily, and the punishment is a fine of \$500, or six months, or both.

Hon. Senators: Agreed.

The Chairman: Clause 31 deals with false fire alarms, and it follows along pretty closely. Are there any questions?

Hon. Senators: Agreed.

The Chairman: Clause 32 creates the offence of manufacturing, producing, selling or being in possession of slugs for fraudulent purposes. Are there any questions?

Senator Flynn: Is that new?

Mr. Christie: Yes. Under the existing law, section 412 makes it an offence to fraudulently insert slugs in a machine that vends merchandise or services. It is extended to prohibit the manufacture.

Hon. Senators: Agreed.

The Chairman: Clauses 33, 34, 46, 47, 48 and 49 are amendments respecting trial by jury. Perhaps we should have an explanation.

Mr. Christie: There are a number of changes here. The first is that under the present law a number of offences must be tried by a court composed of a judge of a superior court of criminal jurisdiction and a jury. Amongst these offences are the following: bribery of officers employed in the administration of the criminal law; rape; causing death by criminal negligence; manslaughter; threatening to commit murder; or an attempt to commit or conspiring to commit any of those offences.

Based on recommendations we have received from the criminal law section of the Uniformity Commissioners and from the judiciary, it is proposed that an accused who is charged with any of these offences may now elect his mode of trial in the same manner as he can in relation to other indictable offences. However, if he does elect trial by judge and jury, unless he waives he is entitled to a court composed of a judge of a superior court of criminal jurisdiction and a jury.

The second point is to ensure that women are on the same footing as men in relation to jury service in criminal cases. In all provinces except British Columbia and Nova Scotia this service is optional for women. In other words, if they are summonsed and indicate that they do not wish to appear, they are not compelled. They will now be on the same footing as men, both as to eligibility and liability for jury service.

I might say that the Royal Commission on the Status of Women, at page 344 of its report, said:

We see no reason why women should not in all cases carry the same responsibility to perform this important duty as men.

Senator Flynn: To which section are you referring, Mr. Christie?

Mr. Christie: It is at the top of page 28, clause 46.

Senator Flynn: What is the situation at the present time as far as the Criminal Code is concerned? Has it not been the practice to follow provincial legislation?

Mr. Christie: That is correct. The Criminal Code allowed the qualification of jurors to be determined in accordance with provincial law. Until a year or perhaps a year and a half ago there were two provinces in which women could not serve on juries in criminal cases.

Senator Flynn: Quebec and Newfoundland.

Mr. Christie: That is right. They have each passed a law making it optional. As a result of this amendment, it will be mandatory that they be on the same footing.

Senator Flynn: Will that abrogate provincial legislation?

Mr. Christie: To that extent, yes.

Senator Flynn: It was considered, I suppose, of the competence of the legislature because it related to the organization of courts.

Mr. Hopkins: Proceedings in criminal matters.

Senator Flynn: Or proceedings, yes.

Mr. Hopkins: Proceedings in criminal matters are federal.

Senator Flynn: But why did the Parliament of Canada abstain from legislating in this field? Until now it had always left the responsibility to the provincial legislatures.

Mr. Christie: I believe the answer to be that until recent times there seemed to be general satisfaction with the qualifications of jurors as spelled out in the legislation of the various provinces. As you know, however, in recent times there has been some agitation to put women on a par. This is in addition to the sentence I read from the report of the Royal Commission on the Status of Women.

Senator Flynn: Yes, I know that, but I was wondering if there were differences between the legislation of the various provinces now that Quebec and Newfoundland have made provision for women to serve?

Mr. Christie: Yes, there is the difference that under the law as it now exists in all provinces—except British Columbia and Nova Scotia, the Northwest Territories and the Yukon Territory,—service by women is optional. In other words, a woman can be asked to serve on a jury and indicate that she does not wish to be bothered. That is the existing difference, and it will be wiped out.

Senator Flynn: And you do not feel that this option should be given by the federal legislation?

Mr. Christie: All I can say is that this is now the policy.

Senator Flynn: Yes, I know. It seems to me, however, that giving the right to a woman to decline to serve on a jury does not put her in an inferior position because of her sex.

The Chairman: No, it is merely to put her in an equal position.

Senator Flynn: I am just thinking of a woman who has a child to look after.

Senator Buckwold: Would that not be a legitimate reason to be excused?

Senator Flynn: It is not mentioned at all.

Senator Goldenberg: Senator Flynn is objecting to the fact that it is putting women in a superior position.

Senator Flynn: That may be.

Senator Goldenberg: They will have a choice and men will not.

Senator Flynn: I would still favour the right of women to be exempted for a legitimate reason.

The Chairman: I am sure that in any court, at any time, if a person has a reason, he or she can always explain it to the judge.

Senator Burchill: I am thinking about my own problems, of course, but as I understand the option is taken away and women are obliged to serve.

The Chairman: Unless they have a good excuse for not serving.

Senator Burchill: Does that mean that a lady has to leave her home and household duties and go to court and present her excuse as to why she is not able to serve? Does that mean that from now on women will be called to serve on juries in the same manner as men? I do not think women want that at all.

Senator Laird: Could I point out to senators who have spoken that any judge has the power to discharge jurors for legitimate reason. Therefore, if a woman is in the spot that Senator Burchill has conjured up she could undoubtedly be released from jury duty.

Senator Burchill: She must go to the court to obtain the release.

The Chairman: Let us suppose a woman has a six-month old child and explains to the court that she is needed at home, I do not see the judge saying "to the devil with the child".

Senator Burchill: She need not have a child but still has household duties and responsibilities.

Senator Lapointe: Women want to enter many activities, so give them this and they will realize that it is a demanding service.

Senator Burchill: I want the option.

Senator Buckwold: Senator Burchill, it may be that now, with women working, men are doing the housework and it would apply in reverse.

Senator Lapointe: There are also reasons why men should be exempt. I am sure that a woman who is eight months pregnant would be exempt.

Senator Laird: There is no necessity for a woman to appear in person before the judge. I have gone to judges on behalf of a client

and have explained his situation, and had no difficulty in getting him discharged from jury duty.

Hon. Senators: Agreed.

Mr. Christie: Regarding clause 47, under section 573(1), as the law now exists, it is provided that:

Where in the course of a trial a member of the jury is, in the opinion of the judge, by reason of illness or some other cause, unable to continue to act, the judge may discharge him.

It has been judicially held that "unable" in that subsection means physically unable. In the case that I have just referred to, a juror phoned the sheriff in the course of a trial stating that he did not intend to continue serving because he had a bias and, further, that his mind was made up as to the innocence of the accused persons. He further stated that he had heard sufficient evidence to form the intention of precipitating a hung jury. This matter was brought up before the Uniformity Commissioners. Mention was made, during the course of the meeting, of a case where it was discovered, half way through a rape trial, that a member of the jury was related to the accused. The amendment proposes to allow a trial judge to dispense with the services of a juror under the circumstances, and I will read the amendment:

Where in the course of a trial the judge is satisfied that a juror should not, because of illness or other reasonable cause, continue to act, the judge may discharge the juror.

Senator Flynn: Is there any provision for a minimum number of jurors?

Mr. Christie: Yes; you can go down to 10.

Senator Flynn: You can dispense with two?

Mr. Christie: Under this provision, the judge can dispense with two.

The Chairman: There are two more clauses, 48 and 49, which have to do with separation.

Mr. Christie: Regarding clause 48, under the existing law, where you have a trial on a charge of murder, the jury must be kept together throughout the trial. This can involve keeping 12 persons incommunicado for several weeks. The Uniformity Commissioners and certain members of the judiciary have recommended that trial judges, in their discretion, be allowed to permit members of a jury in murder cases to separate during the course of a trial.

Senator Burchill: I think that is good.

Hon. Senators: Agreed.

The Chairman: The next item is clause 49.

Mr. Christie: This clause has to do with the publication of certain things that go on during the course of a jury trial. As honourable senators know, in the course of a trial by judge and jury,

a jury may be sent out on many occasions while points of law about admissibility of evidence, and so on, are argued before the judge. It is to prohibit publication of those things that go on when the jury is out of the courtroom that this change has been made; otherwise, the members of the jury could go home at night, and would know exactly what went on in the courtroom.

Finally, it is to be made an offence for a member of a jury to disclose what went on in a jury room, except for the purposes of an investigation into jury-tampering, or for the purposes of giving evidence in relation to such an offence.

Senator Flynn: Does that provision apply after the verdict has been given? In other words, should the secrecy continue? We know of a case presently.

The Chairman: So that I cannot write up my own story on what went on in the jury room after the trial is over?

Senator Goldenberg: This is a new provision, is it not?

Mr. Christie: Yes.

Hon. Senators: Agreed.

The Chairman: The next clauses are 35, 56 and 75.

Senator Flynn: Before we proceed with those, a point was drawn to my attention regarding the French version of clause 128(d), on page 9, dealing with public mischief:

(d) reporting or in any other way making it known or causing it to be made known that he or some other person has died when he or that other person has not died,

In French, it is mentioned "en rapportant, en annonçant ou en faisant annoncer"; "faisant annoncer" does not appear to me to be a correct translation of "making it known". It should be "faisant croire". And, in the end, if the Department of Justice is in agreement with this section, and if, in the end, we make some other major amendments, we could make an amendment to the French version at the same time.

I think it would be important enough to make a formal amendment if we make a new one, and say "faisant croire" ou "laissant croire", one or the other. Here you use "faisant annoncer", "faisant croire", "make believe", "make it known."

The Chairman: We will have that noted and will deal with it later. Clauses 35, 56 and 75 are amendments relating to the Bail Reform Act.

Mr. Christie: Actually, these are just amending some technical oversights. Under the Bail Reform Act, as it now exists, it is possible for an officer in charge of a police station to release a person on a promise to appear or on a recognizance. If the person does not live up to his promise to appear, he is liable to prosecution. Persons can come before these officers in charge in another manner; that is, a warrant of arrest can be issued by a justice of the peace, but the warrant can be so endorsed that, if the officer in charge is satisfied when the person is brought before him that he should be released,

he can then release him; but there is no provision for making it an offence if that person does not live up to the conditions of his release. All we are doing here is covering that little gap that existed.

The other two are quite minor. Section 629 of the Code now reads:

Subject to subsection (2), a subpoena shall be served in accordance with subsection 455(3).

Subsection 455(3) was renumbered by the Bail Reform Act to subsection 444F(2), and that oversight is simply being taken care of. A similar oversight is being taken care of in relation to the Visiting Forces Act. It is simply a case of the renumbering caused by the Bail Reform Act not being carried over to all the places it should have been.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: Next, clause 37, forfeiture of weapons used in the commission of crimes. Are there any questions in relation to that?

Senator Buckwold: I presume they have been doing it, in any event.

The Chairman: Yes. Is it agreed?

Hon. Senators: Agreed.

The Chairman: Next, clauses 38, 44, 54 and 63, dealing with remanding accused persons for mental observation.

Mr. Christie: Under the existing law a person can be remanded for 30 days providing that there is medical evidence to support that decision. It is recommended that in exceptional cases a magistrate be allowed to remand a person without supporting medical evidence. This is based on a recommendation of the Ouimet Committee, under the chairmanship of Mr. Justice Roger Ouimet of the Superior Court of the Province of Quebec.

What that committee said in relation to this was:

(We must recognize that legislation is intended to serve all regions of the country and it is still the case that a physician is not always readily available in many of these areas. We do, however, feel that the circumstances where remands are ordered in the absence of such supporting evidence, should be compelling ones. Consequently, we would suggest that an amendment be framed to include expressly that "compelling circumstances" do exist, thereby restricting those remands ordered without supporting medical evidence.)

Senator Burchill: That is only for 30 days.

Mr. Christie: That is for 30 days, and the committee also recommended that with supporting medical evidence there could be a remand of up to 60 days.

The Chairman: Is it agreed that those clauses be accepted?

Hon. Senators: Agreed.

The Chairman: Next, clause 39.

Mr. Christie: This is just an adjustment to an amendment to the Northwest Territories Act and the Yukon Territory Act. Under that legislation magistrates are now appointed by ordinances made under both of those pieces of legislation, so we are just adjusting to that fact. It is just a technical amendment.

The Chairman: Is it agreed that that clause be accepted?

Hon. Senators: Agreed.

The Chairman: Next, clauses 42 and 64 dealing with the preparation of memoranda of convictions.

Mr. Christie: Under the existing law it is necessary that in every case of conviction for an indictable offence pursuant to a trial by judge without a jury the presiding judge or magistrate shall cause a memorandum of conviction to be prepared in a prescribed form. It has been brought to our attention that this involves a great waste of time, paper and, consequently, money, because they are preparing these forms as they have to do under the Code and they are then just filed. The suggestion is that, rather than go through all of the trouble of preparing such a form, the presiding judge shall simply endorse the result on the back of the Information. However, if, for some reason, a formal copy of the conviction is required it will be forthcoming. It is simply an administrative matter.

The Chairman: It is agreed that this clause be accepted?

Hon. Senators: Agreed.

The Chairman: Next, clauses 43 and 62, dealing with stay of proceedings.

Mr. Christie: Under the law as it is now in relation to indictable offences, attorneys general can enter into stays of proceedings, but the amendment will provide that if a stay is entered and the proceedings are not recommenced within one year they will be deemed never to have been commenced.

Senator Flynn: *Nolle prosequi*.

Mr. Christie: Yes.

Senator Flynn: That is the present situation with regard to many of the charges laid under the Emergency Powers Act.

The Chairman: Under many acts.

Mr. Christie: This amendment will apply to proceedings instituted both before and after the coming into force of the act. Also, we are going to provide for a *nolle prosequi* in relation to summary conviction matters. At the moment the Criminal Code is quite silent in that respect.

The Chairman: I might make the statement right now that this is a matter which, I believe, has caused a great deal of concern to those convicted with the law. In other words, a stay of proceedings is entered into, they do not proceed and, consequently, the man cannot have his name cleared. The theory is that you stay the proceedings because you just do not at the moment have all the evidence you need.

Senator Flynn: And the attorney general hesitates to say that he does not have a case.

The Chairman: This has particularly affected those who wanted to go to the United States, for example, but who suddenly found that 14 years before a case had been started against them but had never proceeded with; and, of course, as far as the Americans authorities are concerned they are still under indictment.

Is it agreed that clauses 43 and 62 be accepted?

Hon. Senators: Agreed.

The Chairman: Next, clause 45.

Mr. Christie: Section 545 of the Criminal Code now reads:

Where an accused is, pursuant to this Part, found to be insane, the lieutenant governor of the province may make an order for the safe custody of the accused in the place and in the manner that he may direct.

The Ouimet Committee made this recommendation:

The committee recommends that Section 545 of the Code be amended so as to remove any doubt that an order of the lieutenant-governor may encompass a broad scope of disposition, including discharge from custody in the initial instance.

And that is what that amendment does.

The Chairman: Is it agreed that clause 45 be accepted?

Hon. Senators: Agreed.

The Chairman: Next, clause 50 dealing with the presence of the accused in court during the trial of an issue as to whether the accused is, on account of insanity, unfit to stand trial.

Mr. Christie: This amendment would allow the accused to be removed from the court room during the trial of the issue as to whether he is, on account of insanity, unfit to stand trial, if the presiding judge is satisfied that the accused's continued presence in the court may have an adverse effect on his mental health.

This amendment, again, arises out of a recommendation by the Ouimet Committee, and this is what the committee had to say:

We have considered whether the presence of the accused should be mandatory during the trial of the fitness issue. This question arises because his appearance in person, experts suggest, could in certain instances cause him psychological damage. We accept that there are some instances wherein the fitness hearing

would better take place in the absence of the individual than risk aggravation of his mental state.

Senator Burchill: I think that is very desirable.

The Chairman: Is it agreed that clause 50 be accepted?

Hon. Senators: Agreed.

The Chairman: Next, clause 51, which deals with proof of previous conviction by certificate.

Mr. Christie: Under section 594 of the Code the attorney general can prove the existence of a previous record by certificate provided that before the trial he gives notice to the accused that he intends to use such a certificate.

It was brought to our attention that crown counsel will often not know before trial whether he will need to prove previous convictions either because the accused does not go into the box or because he is acquitted. The proposed amendment takes care of this merely by requiring reasonable notice.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: Clauses 52, 57, 61, 68 and 72 deal with absolute and conditional discharge. I think these are new clauses.

Mr. Christie: These are new clauses. They introduce into the law the concept of finding a person guilty either on the evidence or by reason of his plea, but not proceeding to conviction. The court would be allowed simply to say, "You are discharged" and let him go, or, "You are discharged subject to certain conditions", to be specified in a probation order. This again is a recommendation of the Ouimet Committee. It relates to offences other than those that are punishable by a minimum punishment or by 14 years' imprisonment or by more severe punishment.

The Chairman: It deals with the *de minimis* principle, where a man is charged with a certain offence and the judge feels it is not really serious enough.

Mr. Christie: Not really serious enough to proceed to conviction. In effect, the judge says, "I find you are guilty, but under the circumstances I am not going to convict you."

The Chairman: It gets away from the situation in which a judge says, "This really should never have been in front of me, but now it is here I have no alternative."

Mr. Christie: No. It is intended to go much further than that. There could be a person in front of a judge who clearly should have been there for a violation of the criminal law, but the judge, having regard to his age and other surrounding circumstances, says, "Even though you are guilty, I am not going to enter a conviction against you."

The Chairman: Is there any comment? Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 55 deals with reports by trial judges to appellate courts. Are there any questions? It is just routine, is it not?

Mr. Christie: Yes.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 58 deals with intermittent serving of sentences of imprisonment. I think this is new.

Mr. Christie: That is right. Again, this comes from the report of the Ouimet Committee. There are undoubtedly cases where relatively short sentences can best be served in the public interest periodically; that is on weekends, for example. Sentences of that kind will permit the convicted person to retain his employment, which, in turn, will assist in avoiding the undesirable consequences that often flow from loss of employment, including the burden imposed on the community at large by reason of dependents becoming welfare cases.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 60 deals with bail estreatment proceedings.

Mr. Christie: This is a very technical amendment. It was pointed out that under the law as it now exists the writ of *fieri facias* has to be delivered to the sheriff in the territorial division in which the order was made. It often happens that the accused has no assets, or does not even live in that division. This is now amended so that the writ of *fieri facias* shall be delivered to the sheriff of the territorial division in which the person against whom the order is made has property, resides or carries on business.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 65 deals with appeals by way of trial *de novo*.

Mr. Christie: Section 747 of the Criminal Code designates the appeal courts for the purposes of appeal by way of trial *de novo*. This amendment will designate the district courts as the appeal courts for such appeals in Newfoundland. At the time section 747 was enacted these district courts were not functioning in Newfoundland, so it is just catching up with that fact.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 66 deals with notice of appeal in summary conviction matters.

Mr. Christie: This is a very minor and technical amendment. It recognizes the fact that you file a notice of appeal with the clerk of the court rather than serve it.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 67.

Mr. Christie: This is just an oversight. There were a few words left out of what is now section 754 in relation to trials *de novo*, and these words are inserted. It is purely technical.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 69.

Mr. Christie: Again, this is a very technical matter. The Statute Revision Committee, in preparing the Revised Statutes of Canada in 1970, inadvertently failed to include the words, "the definition 'approved container' in" in section 744. It is really a rectification of a typographical error by the people who revised the statutes.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 71 is to rectify an error in the French version.

Mr. Christie: Again, this is very technical. The French version and the English version are not compatible. This will bring them into line. It is a linguistic matter.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Clause 73.

Mr. Christie: Perhaps I should explain this in a little more detail. Under section 120 of the National Defence Act it is possible for servicemen overseas to be charged with offences against any federal statute, including the Criminal Code. Subsection (2) provides that where a person is convicted overseas, the court may

... impose the penalty prescribed for the offence by Part XII of this Act, the Criminal Code, or that other Act, or ...

and these are important words

impose dismissal with disgrace from Her Majesty's service or less punishment.

The Department of National Defence had a case in Puerto Rico where a man was charged with murder. They looked at this and realized that under the words:

or impose dismissal with disgrace from Her Majesty's service or less punishment,

this could result in a punishment as little as a reprimand. This is to ensure that on a charge of murder the person will get the minimum sentence prescribed by the Code, which is either death or life imprisonment.

Senator Haig: That means that if a Canadian serviceman in a foreign country commits an offence against the Code he is charged under our Code.

Mr. Christie: Under the National Defence Act for violating our Code.

Senator Haig: And section 218 is murder.

Mr. Christie: Murder.

Senator Buckwold: If a member of our armed forces serving overseas commits an offence, say murder, involving a civilian of the country in which he is, would he be charged under the laws of the country he was in or under this section?

Mr. Christie: To give you the full answer would be difficult for me, just off the top of my head, because there are some rather complicated agreements—NATO agreements, visiting forces agreements, and so on. I think the law, generally speaking, is that if he is accused of murdering a civilian the civilian courts in the country would have the first option to try. If they decided not to try the person, they could waive that option, and he could be tried by the military.

Senator Buckwold: If a Canadian serviceman was murdered, would an accused serviceman be automatically tried under this section, or, again, would it be under the civil law?

Mr. Christie: I cannot answer that question. I would rather guess that the civil authorities would still perhaps claim primary jurisdiction. However, I know of a case in Germany where a young soldier who shot his wife and two children was tried by a Canadian court martial for murder.

Senator Flynn: That would be murder of a civilian. Suppose he kills a fellow soldier?

Mr. Christie: I cannot answer that question.

Senator Flynn: I think the rule would be the same.

Mr. Christie: I think so; that is my view.

Mr. Hopkins: It is also my view that in the case of a soldier killing another soldier the waiver would presumably be automatic.

Senator Flynn: Yes.

The Chairman: It would depend on the particular circumstances.

The final item is clause 76, dealing with the coming into force of this new legislation. This covers different sections coming into operation at different times. Are we agreed on that?

Hon. Senators: Agreed.

The Chairman: The only thing we have left to deal with is this question of contempt of court.

Senator Flynn: Mr. Chairman, the sponsor of the bill, Senator Laird, mentioned that the Canadian Airline Pilots' Association might wish to make representations in regard to skyjacking. I think they should be invited to appear, if they want to.

Senator Laird: Mr. Chairman, could I make this suggestion, that you or someone contact them and ask them if they wish to come. They did appear and gave very good testimony, as Mr. Christie can confirm, in the committee of the other place. They may consider that sufficient for their purpose; but at least, as Senator Flynn mentioned, I think it would be well to give them another chance.

The Chairman: Thank you, Mr. Christie, for your attendance.

The committee adjourned.

Wednesday, June 14, 1972.

The committee hearing resumed at 9.30 a.m.

The Chairman: Honourable senators, we are here this morning for the sole and simple purpose of discussing clause 4 of Bill C-2 which deals with contempt of court. We have already dealt with the rest of Bill C-2.

Senator Goldenberg: Mr. Chairman, just before you come to clause 4, which is the reason for our meeting this morning, I should like to report, if I may be allowed to, that I have had two calls from the President of the Canadian Air Lines Pilots Association stressing the urgency of enacting the clause dealing with offences relating to aircraft. Apparently the international association is contemplating strike action against hijacking very shortly, and the President of the Air Lines Pilots Association told me that it would help a great deal if this particular clause was enacted within the next few days.

I just thought I would report that to the committee.

Senator Flynn: You mean help the strike, or what?

Senator Goldenberg: It would help retain peace if we showed that Canada was enacting this type of legislation. He called me as late as noon yesterday, again saying it was very urgent from their standpoint that this clause be enacted. Of course, they are not concerned with the rest of these amendments; their concern is with the offences relating to aircraft.

Senator Flynn: There are others who are concerned with the rest of the bill.

The Chairman: Thank you, Senator Goldenberg, for that information.

Honourable senators, we have before us the Minister of Justice, the Honourable Otto E. Lang, and the Deputy Minister of Justice, Mr. D. S. Maxwell.

This is an omnibus bill which we have before us and, of course, either we get it through or we do not get it through.

Senator Flynn has proposed an amendment, and I believe copies of that amendment have been distributed to honourable senators. Perhaps what we should do, in order to regularize the procedure, is to have Senator Flynn move his amendment to clause 4.

Senator Flynn: I will do so, Mr. Chairman. Should I comment on it at this time?

The Chairman: Yes, we will ask you to comment on it at this time and then we can get any answers that are necessary from the witnesses.

Senator Flynn: I am happy the minister has agreed to be with us this morning because I think that the point I raise in my amendment is an important one and that it is of interest to the minister and his officials.

The amendment is based on opinions given to the department by the Quebec bâtonnier. I have a copy of a letter which the Quebec bâtonnier, Yvon Jasmin, sent to the minister last May in which he referred to the views of the Quebec Bar recommending that the Code be amended to provide for the right of appeal on a conviction of contempt in the face of the court, as it does for contempt which is not committed in the face of the court, or otherwise. This letter also referred to previous views which were submitted to the department, where the view was expressed that something should be done to provide for what you might describe as a cooling-off period, to give both the judge and the accused a chance to cool off before a decision is made and a sentence imposed.

That is one point that I have endeavoured to cover in the proposed amendment which has been distributed.

The Chairman: Honourable senators, can we take the amendment as read?

Senator Laird: Are we not dealing with the whole amendment?

The Chairman: Yes, we are.

Can we take the amendment as read?

Hon. Senators: Agreed.

Senator Flynn: I may come back to the text of the amendment in my remarks.

The second point which I referred to in the chamber was the problem of an appeal where the record would not be sufficient for

the Court of Appeal to come to a decision. I was referring to cases where the contempt would consist of gestures rather than words. If there is no written record before the court, the Court of Appeal would be put in the difficult position of, perhaps, having the obligation to summon the judge to testify, thereby putting the judge in a very delicate position—an impossible position. This is a problem which is particularly bothering many members of the judiciary. I have had several contacts with members of the judiciary who have expressed views in that regard. I am not going to name any of the members concerned because I do not think it would be proper.

It would have been a good thing if this committee could have heard from members of the judiciary, but we all realize this is a practice we should not start.

The Chairman: Senator Flynn, you were requested to ask them if they would appear, were you not?

Senator Flynn: Yes.

The Chairman: And they have decided not to appear?

Senator Flynn: They decided they were really not in a position where they could appear. As a matter of fact, I spoke to one specific justice of the Superior Court of Quebec about this and he told me that he did not feel any of the members of that court could appear. I have also been given to understand that members of the Supreme Court of Ontario have also been in touch with members of this committee, expressing the same view, namely, that they would like to comment on the amendment but do not feel they can appear as witnesses before this committee.

The clause as passed by the House of Commons deals with the problem of providing an appeal from the conviction in the case where the contempt is committed in the face of the court, and that answers the recommendation made by the Canadian Bar and the Bar of Quebec, but it does not correct the technical problem, which I raised, of trying to constitute a record on which a court of appeal can pass judgment when there is an appeal from the conviction.

Furthermore, it does not attack the problem at its root. In my opinion the problem at its root is whether we are going to continue with the system of having the judge before whom the contempt is made be the one to decide. That is, when the contempt is made in face of the court, it is the judge presiding in the court who should deal with it, and, if we are going to continue with that system, we have to take some precautions in order to give the judge a chance to reflect before making his decision and imposing sentence. At the same time we ought to give the accused the chance to explain his conduct and justify his behaviour, if there is any justification.

That is why I have made the proposed amendment, Mr. Chairman. May I read the amendment at this time?

The Chairman: Yes, please do.

Senator Flynn: Perhaps there should be an introductory paragraph saying that we are abrogating section 9 and replacing it with this proposed amendment. In any event the proposed amendment to Bill C-2 reads as follows:

9. (1) Where a court, judge, justice or magistrate charges a person with a contempt of court committed in the face of the court, he shall describe the facts upon which he bases his charge and shall invite the person so accused to justify his behaviour at a sitting to take place not sooner than the following day.

(2) At any such sitting, the court, judge, justice or magistrate shall ensure that the facts upon which the charge is based and the justification offered are made part of the written record, and if, in his opinion, the person charged with the contempt failed to justify his behaviour, he may then summarily convict such person of the contempt.

(3) Where a person is summarily convicted for contempt of court, whether committed in the face of the court or otherwise, and punishment is imposed in respect thereof, that person may appeal

- (a) from the conviction, or
- (b) against the punishment imposed.

(4) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and, for the purposes of this section, the provisions of Part XVIII apply, *mutatis mutandis*.

(5) The hearing of such an appeal shall be given priority by the court of appeal.

Having read the text of the amendment, perhaps I may be permitted to go back over it and comment on it.

The Chairman: Yes.

Senator Flynn: In the first paragraph there are three points to consider. A judge is obligated to describe the facts upon which he bases his allegation or charge of contempt. For instance, he might say, "You showed your tongue to me and I don't see why you should not be convicted for contempt of court." So, by this statement of the judge we would have on record the facts concerned.

The accused would then be given the opportunity to justify his behaviour. That is a principle not embodied in the Criminal Code but one which is normally followed. It is provided, as I have mentioned before, in the Code of the Civil Procedure in the Province of Quebec, section 52.

Now, so far as the cooling-off period is concerned, I have provided that the sitting is to take place not sooner than the following day. That gives about 24 hours at least for the judge and the accused to think it over and cool off. I mentioned the following day thinking that on some occasions the judge might want to postpone the hearing of the justification to a later date because, depending upon the circumstances, it might be useful to do so.

I think that with this process as outlined in paragraph (1) we have achieved the objective I mentioned before to have a good record before the appeal court and to have a cooling-off period.

The second paragraph is rather one of procedure. It describes what should take place at the sitting where the accused is invited to justify his behaviour. It says that, "the court, judge, justice or magistrate shall ensure that the facts upon which the charge is based

and the justification offered are made part of the written record, and if, in his opinion, the person charged with the contempt failed to justify his behaviour, he may then summarily convict such person of the contempt." In other words, if he finds him guilty he passes sentence.

So up to this point you have a complete record of the case of contempt committed in the face of the court so that when you go before the appeal court and appeal from the conviction you proceed as provided under Part XVIII.

Many persons have expressed fears about the delay that could result from the appeal. That is why in paragraph (5) I have provided that the hearing of the appeal shall be given priority. I know, for instance, that Senator Hayden would like to provide for a very definite period for the lodging and hearing of the appeal. In fact, he had in mind something like five or ten days. I am not too sure that that is necessary. A case like that might pose problems in respect of the rules of practice of an appeal court. I am not arguing against the suggestion of Senator Hayden, but it may be that in some cases there is no real advantage in disposing too quickly of an appeal of that kind. It is only in cases where it would hamper the continuation of a trial, and that does not happen when an accused is a witness or an ordinary witness, because he can testify whether he is found guilty and the appeal has not been heard. It does not occur either when the accused is a spectator who shouts at the judge. In that case he is out of the trial in any event. So the only problem is really with regard to a lawyer who would be found guilty of contempt of court in the face of the court. As I say, if he appeals he is free and the trial may continue. If he goes to jail, well it is no worse than the case where the lawyer becomes sick and his client has only to find another lawyer, if the circumstances would justify the court saying that the trial must continue and cannot be postponed.

So this is what I had in mind when I said that it would be sufficient for the hearing of the appeal to be given only priority without going further.

I can say that this amendment would satisfy the members of the courts that I have been talking to. Perhaps there are other words that could be used because, after all, it is only a suggestion, but the essence of this amendment meets the views of these people that I have been talking to and I think they are very important at this time. Some members of the courts feel that by providing only an appeal and not doing anything else at this time we are more or less siding with those who have abused the court or used contempt of court to, let us say, undermine the authority of the court, and to me the protection of the authority of the judiciary of our courts is a very, very important problem and we should not consider lightly the problem which has been raised by this amendment. It is all right in principle, but in practice I see that it could have very serious consequences as far as the authority of the court is concerned.

The Chairman: May I ask you one question, Senator Flynn? Would it be correct to say that your subsection (3) repeats what is in there?

Senator Flynn: Yes.

The Chairman: And that the other subsections are procedural matters?

Senator Flynn: Not necessarily. There are some matters of procedure, in fact you could say that paragraph (4) which provides for an appeal is a problem of procedure too, but the principle of providing for a cooling-off period and the principle of arranging for having a complete record before the appeal court are not merely matters of procedure but are also matters of substance. In the Criminal Code you have procedure and description of crime, both of them in the same act. If this can be achieved in any other way, as I said before, I have no objection at all but my purpose was to find a solution to the problem.

The Chairman: May I at this point call on the Honourable Otto Lang, Minister of Justice, and if he cares to refer any matter to Mr. Maxwell, who is his deputy, he is welcome to do so.

Honourable Otto E. Lang, Minister of Justice: Thank you very much, Mr. Chairman and honourable senators.

There are two particular parts to the amendment which is before you, and one of these parts is really basically procedural in its nature. The other part is the one which provides for a cooling-off period, that is for a delay before a contempt question can be proceeded with. I should like to urge against the conclusion that a delay should be prescribed as a matter of automatic rule. There may be circumstances in which it is essential for the court in defence of order or propriety to proceed peremptorily, where there is no other alternative which would properly allow the judge to maintain decorum and control over the court. That is one of the reasons why we do not propose to remove from the judge himself the power to deal with contempt in face of the court, because there is a whole variety of circumstances which arise where the court might be in jeopardy in regard to good order if this were not in its power. We do, of course, believe that an appeal is desirable, and that is the major change being made in the law at this time. It provides for an appeal from conviction as well as sentence in case a judge should overstep the bounds, which means that the matter can be looked at by cooler heads. As far as delay is concerned, as a matter of rule I would speak and urge against it. It may be that a guideline that allows a delay when necessary is something that could be elaborated by the judges themselves, but I would hesitate even to suggest that it might be a rule of court. It should be more a suggestion or a guideline which they could examine when considering the situation before them.

The main portion of the rest of subsections (1) and (2) deals with the question of the record and the manner of proceeding. I must say I find it difficult to imagine circumstances in which a judge would not in fact create an adequate record for the purposes of the proceeding and where he would not in the course of the proceeding recite the situation and the circumstances upon which he is proceeding. Therefore I ask whether any such change is necessary to make this a rule rather than leaving it in the hands of the judge himself to do so. I doubt if a rule is necessary. Secondly, I would say this kind of rule should be a rule of court if it is to be a rule at all. If a majority of the judges find that there is a generality of feeling in favour of such a rule, then they have it within their power to make a specific rule. In addition to that we have the power to prescribe by Order in Council such a rule if it is felt that such a rule is required, and I can assure the members of your committee, Mr. Chairman, that if in practice it appears that some such additional rule is necessary, we would be prepared to look seriously at the use

of that power. The point I wish to make therefore is that if this matter is required at all—and I have some doubt about it—it should properly be the subject of a rule of court rather than a change in the law itself.

In the same way, I would say that the matter of giving priority to these appeals sounds at first blush to be appealing. But when one looks at the problem of priority for other matters and the kind of consideration that the Court of Appeal will have to keep in mind in deciding what it is to do when it does not have time to do everything at once, and the fact that the Court of Appeal has a power of selection and has the ability to move matters forward as required, it would seem to be better to leave the matter to the courts. As Senator Flynn himself mentioned, when haste in the considering of an appeal is not necessary then this matter is best left to the common sense of the judges who deal with it rather than being prescribed.

Senator Choquette: Were any representations made to you or the Department of Justice with regard to the second part, that is the appeal of a conviction. Do you think this is desirable and do you think it is popular in every other province?

Hon. Mr. Lang: There were representations made to us. This is a matter for which the Canadian Bar Association, among others, has indicated support. The matter was also discussed by the Uniformity Commissioners and they have supported the proposition and that is the position of all the attorneys general and the deputy attorneys general meeting together.

Senator Flynn: I think the question asked by Senator Choquette went a little further than that. Do you have any views against this amendment from members of the courts?

Hon. Mr. Lang: I have just asked my deputy and he confirms my thought that we have had no representations against it.

Senator Flynn: I would say many members of the Senate have received such representations. At the beginning they were against the appeal of the conviction, but they would be satisfied that there could be an appeal if they would not be put into the position of having to testify before the Appeal Court. There was also the question of perhaps providing a procedure whereby you would have fewer cases of contempt of court. The minister has talked about the idea of adjourning the matter until the following day. He has indicated that there may be cases where an adjournment may not be a good thing. If a judge has to face a difficult incident he can adjourn the trial to the following day. I think this is the way it could be done. In other cases if someone in the court room is accused of contempt of court the judge can order the expulsion of the accused or he can order the evacuation of the court room. I feel the judges have all the tools they need to deal with the situation which the minister had in mind. This is why the provision for a cooling-off period is very important, as well as the question of the written record.

Hon. Mr. Lang: I had in mind the possibility of contemptuous actions of a person who, indeed, may be a party and, therefore, not excludable, or who may be a witness and his evidence is necessary

before the court. The objective of the party in contempt could indeed be to delay the action. If the contempt is repeated, where do you go from that point? It seems to me that in this circumstance the judge should be left with the discretion of determining whether to proceed with the matter forthwith or delay the action.

Senator Flynn: The recent cases in Montreal, in murder trials, would suggest that even if you have a witness who is guilty of contempt of court you can send him out until the following day and then you can find him guilty. There is no problem with that at all as far as I am concerned.

Senator Laird: In so far as the Law Reform Commission is concerned, I spoke as a sponsor of the bill to Mr. Justice Hartt. He indicated that they had not been involved in the act up to this point. Can either Mr. Lang or Mr. Maxwell give any indication as to whether they are now giving consideration to this problem raised by Senator Flynn or whether they propose to in the future?

Hon. Mr. Lang: I cannot speak to this exact matter. Of course, they are studying the whole area of criminal law and procedure, but I do not know whether they have yet specifically turned their attention to this matter. Certainly, they would not be limited from doing so.

Mr. D. S. Maxwell, Deputy Minister of Justice and Deputy Attorney General: Senator Laird, I am reasonably certain that they will be looking at this matter in the course of their total examination.

Senator Goldenberg: I took a look at the outline of the studies they plan to undertake, and they specifically mention contempt of court.

Senator Flynn: As far as the whole problem is concerned, I know the line of thought is that you should refer the matter of contempt of court in the face of the court to a judge other than the one before whom the offence is committed. This is only a comment regarding what the study of the Law Reform Commission might involve.

In the United States there are some jurisdictions where contempt of court in the face of the court is considered as an ordinary offence or crime. It has to be proceeded with by a formal accusation, and this is referred to a judge other than the one before whom the offence was committed.

Mr. Maxwell: Senator Flynn, I may say that this idea was given some considerable thought when we were formulating a remedy. It was felt that if we did that we might very well put the trial judge in a position where he would have to testify before another judge. It seemed to us that this would not be particularly desirable.

Senator Flynn: I agree. I mention this only for the record. I have been discussing this matter, but there has not been any formal conclusion. I received a letter this morning from René Letarte, bâtonnier of the District of Quebec.

The Chairman: You are talking about Quebec City now?

Senator Flynn: Yes, the District of Quebec is Quebec City. He is a member of the General Council of the Bar of Quebec and he was given a mandate to express the views of the Bar on this question. I may file this letter.

The Chairman: Do you wish to file the letter?

Senator Flynn: Yes, we might as well file it for the record.

(For text of letter see Appendix)

He would have favoured an amendment to section 129 of the Criminal Code and would have added something to cover cases of contempt of court and would have included them in the section dealing with obstruction of justice. I think it is either section 119 or 129. I am not too sure. In short, he was favouring the U.S. system which I have referred to. I say this, not because I support this view but merely to put it on the record.

Senator Choquette: Would a judge testify before another judge or would he be precluded from doing so?

Hon. Mr. Lang: He is not technically precluded from doing so, but I think, in the ordinary case, he would not testify. I think the record would be adequate. Of course, in a normal appeal we would not see evidence taken at that point.

Senator Choquette: How do you think it would be adequate if the offence consists of motions and signs. One day the judge says, "You stuck your tongue out at me." Then it goes to the appeal court and the accused says, "I was licking my lips." When he is sworn to give further evidence, for the purpose of delaying the action he thumbs his nose, and on appeal he says, "I was just scratching my nose." How long can this go on? The judge will have to consider whether he is going to rely on the witnesses, who will naturally be the accused's admirers. They appear before the judge and say, "He was scratching his nose." Where does the judge go from there: These fellows will have a field day. I think we are giving them the opportunity to have a field day, every time one of these thugs appears before our courts. What do you say about that?

Hon. Mr. Lang: Providing the appeal does not change the facts, a great deal of weight will have to be attached to the indication which a judge has given that he has interpreted certain acts as contemptuous. After all, we do have to regard court procedure as one in which the judge is an important and impartial officer; and, after all, in a sense, the contempt should not be treated as though it were contempt of the judge so much as contempt of the court and the procedure. That is one of the reasons why I think it is wrong to think about having to go to another judge. It is not the judge that has been insulted but the procedure and the court which he is trying to protect. Certainly, great weight would be attached by any court of appeal to the statement or record as to the judge's view of the facts. There are, of course, alternative witnesses available if that kind of a question resolved itself into a further determination of fact by the court of appeal; the clerk of the court, and so on, might be available.

Senator Flynn: The principle of not providing an appeal from a conviction of contempt of court committed in the face of the court is, as you have just given it, Mr. Minister, that we attach great weight to the views of the presiding judge. That was the principle behind the system as it was. If you change it now it is because you are not satisfied that this situation should be continued.

Hon. Mr. Lang: It is recognition of the fact that excesses could conceivably occur and that the very attitude of people towards the court and the judicial system may demand that in such circumstances a review take place. In other words, while what I have said is, I think, accurate about the nature of the judicial process, it is still true that we are dealing with human beings who are placed in the role of the judge, and to protect against the appearance of injustice in some particular cases it seemed to us desirable to provide for an appeal.

Senator Flynn: Nevertheless, in the present circumstances, especially as they now prevail in Quebec, it seems to me that by just adopting an amendment to provide an appeal from a conviction of contempt in face of the court seems to be taking the side of the accused or of those found guilty of contempt of court in these circumstances. I am quite sure that a very simple amendment such as this will be attributed as a victory for those who have abused the courts recently, and more or less a denunciation of some of the members of the judiciary who have had to deal with very difficult situations.

Hon. Mr. Lang: Well, I should simply like to say firmly that that is not the case and that it should not be interpreted as a victory. The last thing we should do, I feel, is to be slow about making a reasonable change in the law for fear that it will look as though it will have an effect or influence in some particular area. I would not want to do it, but one could select examples, going back over quite a long period of years, from any jurisdiction in Canada where lawyers may have felt that it would have been desirable to have the right of appeal in certain circumstances; and this is really what we are responding to.

The Chairman: You agree with that, Senator Flynn?

Senator Flynn: I agree with the principle, but, as I said, I do not think this is the best time to make such an amendment. This is why I have to make such amendment, which makes it clear that we are not attacking the judges or the courts, but are just providing for simple justice, and we are not siding with some terrorists or anarchists.

The Chairman: Are there any further questions?

Senator Flynn: I just want to make sure whether it is clear that the substantive proposals in this amendment can be dealt with procedurally by rules that could be devised.

Hon. Mr. Lang: Yes.

Senator Flynn: You mean the record?

The Chairman: The procedural amendment can be dealt with by the courts themselves.

Senator Martin: Yes, passed with an Order in Council. You would also have to have the co-operation of the provinces.

Hon. Mr. Lang: It could be done by rules of the court in the ordinary process, which is to say the judges themselves devising their own rules. There is, in addition, in the Criminal Code power in the case of criminal procedure for Order in Council prescription of rules of court, so that we would have the additional possibility of doing it that way. Certainly, it is within the hands of the judges to do it through the usual rules of court procedure.

The Chairman: Are there any further comments or questions?

Senator Fergusson: Mr. Chairman, you asked for comments or questions. I have both.

I should like to ask if there was any real study of this matter and consultation, for instance, with the Canadian Bar, judges, or attorneys general of the various provinces before this particular clause was introduced.

That is my question, but I have a comment to make also.

Hon. Mr. Lang: There was consultation quite broadly, including consultation with the Canadian Bar, and the Uniformity Commission, which includes the provinces.

Senator Flynn: On the principle of the appeal?

Hon. Mr. Lang: On the principle of the appeal, yes.

Senator Fergusson: But not as to whether or not it should be put into the act?

The Chairman: I believe you had a comment, Senator Fergusson.

Senator Fergusson: I should like to say I was quite impressed with the amendment, and I hope the minister will conduct further investigation into this matter to see if it is justified and whether we should follow those suggestions. If the Law Reform Commission does not make any changes that would bring about very much the same type of thing, and if the judges' rules—which, as the minister says, can be changed—are not changed to follow this, and the Order in Council is not passed, I hope that further consideration will be given to changing the legislation or, perhaps, to passing the Order in Council. I think the change in legislation is better.

The comment I should like to make—and this gives me the opportunity to do so—is that I am really very much opposed to omnibus bills, and I hope that we are not going to get too many more of them.

Senator Choquette: Hear, hear.

Senator Fergusson: For instance, you may be greatly impressed by an amendment, but at the same time there may be a great many other things in the bill which have nothing to do with that

amendment which you want to support and are very anxious to support. In my case, for instance, there are many things in this bill which I would like to see become legislation right away and I do not want to do anything to interfere with that. One thing, of course, is corporal punishment, and I hardly need tell honourable senators that another is jury service for women. The reason I am interested in that, of course, is because I was a member of a committee that sat for years investigating corporal punishment, and I certainly want to see that it is done away with in Canada. There are a number of others I could mention, but, of course, the most important one to me is jury service for women, which I want to see become law as soon as possible. So, I will have to vote for the bill, but I do not like omnibus bills.

Hon. Mr. Lang: Well, it would certainly be our intention to watch proceedings here. I am not at all convinced that even a rule of court is necessary, because the ordinary good sense and co-operation of the judges may well take care of the matter, but we will certainly watch it.

Regarding the question of omnibus bill, in terms of procedure we are up against the problem that certain things might never be done if we did not put them together and do them all at once.

I must say that I appreciate the work you have done with regard to jury duty and women on it, and we were glad to incorporate your ideas in this bill. Whether we would ever have found time in the House of Commons to deal with the 20 bills that might have been required if we divided this up, I have great doubt about, so I am afraid I cannot hold out any promise to you with respect to omnibus bills.

Senator Fergusson: Well, I just express my feelings about them.

Senator Flynn: One further question, Mr. Chairman.

The minister has indicated that power is provided in the Criminal Code for the minister to enact some rules of procedure that might cover what is included in paragraph 2 of my proposed amendment and that it could also be dealt with by the courts themselves. I would hope that it would be dealt with under the authority given by the Code so that we would have uniformity of procedure all across Canada, because you could have the Superior Court of Quebec dealing with the matter in one way and the Supreme Court of Ontario dealing with it in an entirely different way.

Hon. Mr. Lang: I believe that is why the power of Order in Council is, in fact, given, so that if these rules were being made we might make them uniform.

Senator Choquette: Mr. Chairman, I think you intimated to us that this was going to be submitted to the Law Reform Commission. I think it was the intention—or we are probably ready to do so—to give this bill third reading today in the Senate. Is this commission examining the proposed amendments now, and is it ready, or will it be ready within the next five or six days, for instance, to express an opinion on this? Are we delaying the passage of the bill?

Hon. Mr. Lang: No, I do not think they will be ready within that period of time. They are really beginning some very quick and

effective work on the whole criminal area which may well lead to further amendments throughout the criminal law next year. But I certainly would not suggest that that has any direct bearing on the passage of the bill at the moment.

Senator Choquette: Thank you.

The Chairman: Honourable senators, we have had an hour now with the minister to discuss the proposal that the present section 9 as it appears in clause 4, on page 5 of the bill, be deleted and that the proposed amendment, consisting of five subclauses proposed by Senator Flynn, be substituted therefor. All those in favour of the amendment please so signify. All those opposed to it? The amendment is lost.

All those in favour of clause 4 as it presently stands? All those opposed to it? The clause is passed.

Senator Laird: Mr. Chairman, from a procedural point of view, have we actually passed the clauses dealing with hijacking?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Senator Laird, I believe the discussion was only dependent upon possibly hearing the pilots. In any event, if we report the bill without amendment we cover it in that way.

Senator Goldenberg: On that point, Mr. Chairman, I must say that I was asked to communicate with the pilots. I did so, and they authorized me to say that they approve of the measure as it is before us and stress the urgency of enacting it.

The Chairman: All those in favour of the hijacking clauses of the bill please signify.

Those clauses are passed.

Those in favour of the title and the preamble? Passed.

May I have a motion that the bill be reported without amendment?

Senator Goldenberg: I so move.

The Chairman: Is it agreed, honourable senators, that the bill be reported without amendment?

Hon. Senators: Agreed.

Senator Flynn: On division.

The Chairman: This session is now terminated.
Thank you very much, Mr. Minister.

APPENDIX

[Translation]

QUEBEC BAR

Cabinet of the President of the Bar

Quebec, June 12, 1972.

The Honourable Senator Jacques Flynn, Q.C.
The Senate of Canada
Ottawa, Ont.

Re: Bill C-2

Dear Colleague,

Further to our conversations, we wish to confirm that the Quebec Bar is very pleased with the introduction of Bill C-2 as a first step, in that it provides for the lodging of an appeal both from a conviction and a sentence for contempt of court.

We believe, nevertheless, that while the judge should be permitted to uphold the authority in his court, there is reason to go much further and not invest him with powers which may induce him to assume a repressive attitude when dealing with a case.

It is with this view in mind that the General Council of the Quebec Bar at its last meeting of June 2nd agreed with the principle that contempt of court should be treated in the same fashion as all other offences.

The judge who becomes aware of such an offence could order the detention of the accused until his appearance before the appropriate jurisdictions under normal procedures.

The legislative mechanism could probably be provided through the amendment of Section 129 of the Criminal Code to which could be added, as an obstruction to the course of justice, a paragraph f) which would specifically include contempt of court whether committed inside the tribunal or outside the premises.

Finally, it would be useful to provide for alternative procedures in these cases (summary proceedings or criminal act) taking into consideration the Bar Act and the Criminal Records Act. In view of the fact that the proposed amendments are fairly significant, we do not believe it constructive to submit our representations at this stage of the legislative process concerning Bill C-2 which could possibly be held up between the two Houses thus impeding an important improvement to the present situation.

Instead, we would preferably submit the representations to the Law Reform Commission while at the same time putting ourselves at the disposal of the Senate should you deem it necessary to invite us.

In the meantime, I remain,

Yours sincerely,

RENE LETARTE



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 9

WEDNESDAY, JUNE 14, 1972

**Ninth Proceedings on the examination of the parole system
in Canada**

(Witnesses and Appendices—See Minutes of Proceedings)



STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*

The Honourable Senators:

Argue	Lang
Buckwold	Langlois
Burchill	Lapointe
Choquette	Macdonald
Croll	*Martin
Eudes	McGrand
Everett	McIlraith
Fergusson	Prowse
*Flynn	Quart
Fournier (<i>de Lanaudière</i>)	Sullivan
Goldenberg	Thompson
Gouin	Walker
Haig	White
Hastings	Williams
Hayden	Yuzyk
Laird	

**Ex Officio Members*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, June 14, 1972.

(16)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.45 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Argue, Choquette, Eudes, Fergusson, Flynn, Goldenberg, Hastings, Laird, Lapointe, Martin, McGrand, Prowse and Quart. (14)

In attendance: Mr. Réal Jubinville, Executive Director (Examination of the parole system in Canada); Mr. Patrick Doherty, Special Research Assistant.

The Committee proceeded to its examination of the parole system in Canada.

The following witnesses, representing the Ontario Association of Chiefs of Police, were heard:

Chief S. W. Raïke, Brampton, Ontario—
President of the Association and
Chairman, Legislation Committee.

Chief Edward A. Tschirhart, Barrie, Ontario—
First Vice-President.

On motion of the honourable Senator Hastings, it was Resolved to print the Brief presented by the Ontario Association of Chiefs of Police as an appendix to this day's proceedings. It is printed as Appendix "A"

On Motion of the Honourable Senator Prowse, it was Resolved to print a letter dated June 12, 1972, received by the Chief of Police, Brampton, Ontario, from Mr. John H. Lawrence, National Parole Board, Guelph, Ontario, and a document entitled "Suggested Content of the Police Report" as an appendix to this day's proceedings. They are printed as Appendix "B".

At 12.35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, June 14, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.45 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Mr. Raike, who is Chief of Police of Brampton, Ontario, and who is also the Chairman of the Ontario Association of Chiefs of Police. With him this morning is Chief Tschirhart from Barrie, Ontario, who is also First Vice-President of the Association.

I believe you have Chief Raike's brief in your possession, honourable senators. May we have a motion to incorporate that as an appendix to today's proceedings?

Senator Hastings: I so move.

Hon. Senators: Agreed

(*For text of brief see Appendix "A"*)

The Chairman: I now ask Chief Raike to give a short explanation of his brief, after which both gentlemen will be available for questioning. After that I suggest that both witnesses be given the opportunity to set out their positions more fully, or to give any additional information they wish to put on record.

Would you like to begin, Chief Raike?

Chief S. W. Raike, Chairman, Legislation Committee, Ontario Association of Chiefs of Police: Thank you, sir.

Perhaps I should preface my remarks with the observation that we rather hope we will not add to the general public opinion of the police as ogres and really vindictive types. We take the position that we should not be particularly concerned with the penalties imposed on criminal offenders *per se*, but that in our role as the protectors of the total society and the preventers of crime we should take an active interest in the deterrent effect of these penalties.

Frankly, police officers all the way down from chiefs to the ranking constables are a little weary of being cast as insensitive, hard-hearted individuals without compassion. Despite that, if in doing our job that is the only image that emerges, we are prepared to accept it.

We feel that the public should be made aware of what an imposed sentence actually means. We feel that society should have some concern, in the total criminal context, as to whether a sentence imposed is an appropriate sentence. We are not convinced that news releases always give an accurate picture. For example, they may say that a certain man has committed a particular type of offence and has been sentenced to five years, but we are left with the impression that the general public does not really have any idea what sentence is likely to be served. I would go a little further to say that perhaps many judges are not particularly aware of or appreciate the amount of sentence that would actually be served.

Just as an aside, harking back to the considerable news releases on the subject, I am aware of one rather knowledgeable writer saying that it should not be the function of the judge to determine whether a man should be granted parole or not. We are not here to speak on behalf of judges, but we are at a loss to understand that kind of statement, because, if it is the judge's role to apply appropriate sentences in order to deter accused people and other individuals from committing certain acts, then it would seem entirely appropriate for the judge to have some say in the parole picture. However, as I have said, it is not really our function to speak on behalf of judges.

There are many little things that I think would probably develop from the brief, senator.

The Chairman: Chief Raike, do you want to go ahead on this basis, or would you prefer senators to ask you questions?

Chief Raike: It might be a little repetitive for me to speak on these matters that are in the brief, so perhaps questions would be better.

Senator Laird: Let me start off in this way: What we are trying to do in this committee is to get down to the nitty-gritty of things. For example, I notice with interest your comments about the parolees and their course of conduct. Do you have anywhere statistics available to show the number of persons on parole who have committed crimes? I notice you have a figure in here but it seems to be more or less approximate. So I wonder if you have gathered that information.

Chief Raike: Yes, sir, but I should offer the opinion that statistics are very misleading and can be used one way or the other. Even the statistics that I introduce, I do not suggest that they are

that good because police departments by their very volume of activity are not in a position to compile meaningful statistics. Therefore in the brief I introduce statistics reported to have come from Statistics Canada where they say that 40 per cent of people allowed out on parole commit crimes again and go back in within five years subsequent to their release on parole. I know this is not necessarily while they were on parole, but representing the Ontario Association of Chiefs of Police—and I should introduce the fact that I wrote a letter to every active member of our Association soliciting their opinions so that they could be expressed in the brief—I should say that there is nothing in the brief contrary to any opinion expressed by a chief of police in the Province of Ontario. However, I have some interesting statistics here from the City of Hamilton, and I also have a different type of statistic from the Metropolitan Toronto Police Department. Being larger departments they are in a better position to keep this type of statistic while smaller departments cannot. The chief of police in Hamilton backed his statistics up with individual cases but I do not imagine that we have time to go into these here. To sum it up, in the year 1971, 148 parolees were reporting to the Hamilton Police Department and of this number 52 became involved in offences as set out in Appendix No. 1. Now I would certainly acknowledge that that is a high rate.

The Chairman: Is this referring to offences or is this referring to applications?

Chief Raike: This refers to people who committed offences while they were on parole in that year. That is what I am trying to get at. I can give you an example right at the top of the list. What I am trying to get at—although again statistics can be distorted—but I took this from right off the top of his list and what I find interesting is the short time that elapsed between their coming out on parole and the committing of the offence. Whether that is good or bad, I do not know, or whether the longer the time you are a parolee the less likely you are to commit an offence, I do not know. But I think it is significant that they committed offences very quickly after they were released on parole.

Senator Laird: That brings up another matter which you might be able to deal with at this point. Is not the crux of the problem of parolees and even for those who have been released having served full time the difficulty of obtaining employment?

Chief Raike: I would have to acknowledge that there is some merit in your suggestion, senator, but I would also have to suggest something else. We see that there is some unusual, and while that may be a bad choice of word it is about the only word I can use, concern for getting the parolee employment as opposed to a man who has never committed an offence. I would suggest that in many instances a parolee is better able to obtain employment—probably not of the class that he considers himself as being able to handle. Most chiefs of police that I have talked to, and I have talked to many, agree with this. They certainly support the contention that parolees are given ample opportunity to take employment.

Senator Laird: On the other side of the picture we have had evidence and also one gets the impression from discussions that

there is a great reluctance on the part of employers to employ any person who is on parole or who is an ex-convict.

Chief Raike: It is only an opinion, but we feel and I personally feel quite sincerely that there has been a great deal of progress in this area in recent years. Employers are taking a much more progressive look at this. I would certainly acknowledge your point that that in the case where there is a security risk, for example where a man might be handling a great deal of money, it might be difficult for him to get a job in a bank or something like that. But for most types of offences I do not think it is that difficult for a parolee. But you have to relate this to your present unemployment situation too, I suppose.

Senator Laird: I wish Senator Williams were here because I know he would follow this up with questions about the problems in that respect faced by Indians. They have a very real problem.

The Chairman: Would you mind putting that in the form of a question as to the extent to which this problem involves native people?

Senator Laird: Very well. I realize I am picking out a single class, but have you given any special attention to the problems of Indians and recidivism?

Chief Raike: In the total context?

Senator Laird: Yes.

Chief Raike: No, I do not think so. We have dealt with recidivism, yes, but not of necessity in relation to Indians.

The Chairman: How many Indians do you have in your area?

Senator Laird: I am speaking of Ontario.

The Chairman: Let us deal with his own area.

Senator Laird: Actually you would not have many in Brampton.

Chief Raike: That is true. But I have tried to keep this in the context of Ontario and I think you would find an Indian problem in Kenora rather than in regions in southern Ontario.

Senator Laird: Then you cannot help us with respect to that particular class?

Chief Raike: No.

Chief Edward A. Tschihart, First Vice-President, Ontario Association of Chiefs of Police: If I could make a point here, senator. You are speaking of employment, and I think your parole officers could verify this, that the assistance of the chiefs of police and members of the police departments has frequently been rendered to people coming back on parole. I know personally of a great number that I have obtained jobs for myself which again takes away from this view that police are against the parolees. I know of a

number of cases where jobs are obtained through the police department and parole people coming to us directly for that assistance.

Chief Raike: If I may I would like to introduce a personal opinion on this, again from talking to individual parolees, probably the more dedicated type of criminal, but I have been given this impression by some of them and I can support this from my own experience that many of them having been active in crime and having become accustomed to a pretty high standard of living before going in are not ready to reduce themselves to the standard of living that is commensurate with the type of job they will get while on parole.

Senator Laird: I can understand that, but I do not wish to monopolize the questioning.

Senator Hastings: I have read with interest your very well prepared and very well presented brief outlining the traditional role of the police toward parole and certainly it contained some very interesting observations, assertions and allegations, and I should like to discuss about five of these matters with you for the purpose of clarification and enlightenment. Turning to page 4 of your brief, the second paragraph, you say that some people are asking for the extension of parole opportunities "to apparently less-than-eligible applicants", and further down the paragraph you say they are taking "out-and-out risks based on no other justification that the hope that such risk-taking will eventually improve the system. It would appear that based on antecedent histories, records, and personality traits, of many of those released on parole, too many fall into the latter category." Now I would like to ask you in view of what I consider to be a rather serious allegation against the National Parole Board if it is true in your opinion that they are releasing out and out risks based on no other justification other than hope?

Chief Raike: Well, I am not a great believer in news-clippings, but I have one here somewhere. Of course we have a personal opinion, but I should like first of all to refer to this newspaper clipping quoting a parole authority who acknowledged the fact that they were taking risks, but answering your question in a general way I should say that we get this all the time—that you have to take risks in order to improve the system. Our view is that this does not justify taking those risks purely on the ground. I do not want to nail any individual but I know of a certain person interested in rehabilitation who says that "If I rehabilitate one out of 100, then we have gained something," but the police take the view that this is not fair to the victims of the 99 that were not rehabilitated. We think that is an unjustifiable risk. Perhaps I used the word and it came out in a different context, but we think it is unjustifiable to expose the rest of society to the ones released on parole and who are not likely to be rehabilitated. We think there is a balance which is inequitable.

Senator Hastings: I assume you are alluding to National Parole when you say they are taking out-and-out risks based on no other justification than the hope that such risk-taking will eventually improve the system. I am not interested in your personal opinion or in news clippings. I would like some facts to show on what you base this allegation.

Chief Raike: I have in my file facts concerning individuals who have committed five, six or seven criminal offences and the next day we find them out on parole. I would be very reluctant to indicate individual cases. But I can cite examples in my municipality where individuals have committed murder while they are on parole. We know they have committed prior criminal offences. We consider these unjustifiable risks.

Senator Hastings: This is one individual case.

Chief Raike: No, this is only an example.

The Chairman: Would you please name the case? We are under no obligation here and if this person has been found guilty of murder there is no reason why he needs protection. Take your time, no one is pressing you. We are trying to nail down specifics. We have had too many general statements in this committee up to this point and we are trying to pin down some facts now.

Chief Raike: Clifford George Lawrence was arrested on November 2, 1971, by the Brampton police on the charge of murder and attempted murder. He appeared in court in Brampton on January 11, 1972 and was found not guilty by reason of insanity and was transferred to the Ontario Hospital in Penetanguishene. As this man was charged with murder and attempted murder and appeared in court and was found guilty and committed to the Ontario Hospital in Penetanguishene his case will be presented to the Board at their meeting in Mill Brook on March 21, 1972, at which time, no doubt, his parole will be cancelled. This is as of November 2, 1971. I should acknowledge that this is the Ontario Parole Board. We tend to lump the Ontario and national board in one bag. But in one instance they say he was found not guilty by reason of insanity and in the other case he was found guilty.

The Chairman: Can you clear this up for us? It is a little confusing.

Chief Raike: It is a misprint. There were two men charged and they were found not guilty. They acknowledged they committed the offence.

The Chairman: They were found not guilty by reason of insanity. What happened then?

Chief Raike: They are still in the Ontario Hospital.

The Chairman: Before this time, on what had they been found guilty?

Chief Raike: I do not know. I do not have their records before me. There were two men involved. I can say that the day before the murder he was reporting to us on parole. I acknowledge we should not mention individual cases. However, over the years when you get isolated cases such as this, and you talk to chiefs of police who have had other cases such as this, you form opinions. We are not here to suggest there is a large volume of this occurring. But I am suggesting this is a case of unjustifiable parole. If a jury, in a short period of time, considers that these men should not be on the loose, one wonders why the Parole Board would not do the same.

The Chairman: He was out on parole when he committed the murder?

Chief Raike: Yes sir, he was.

The Chairman: You do not know on what charge he was convicted before this offence?

Chief Raike: It would be a number of charges. I know they were non-violent charges. They were not murder.

The Chairman: There is no indication from the previous cases that he would be capable of murder.

Chief Raike: No sir, that is quite correct.

Senator Hastings: I am turning to page 5, of your brief, the second sentence where you say:

However, we would question the judgment of any individual or group taking unjustified chances in exposing innocent victims in our society to loss of life, . . .

That is a pretty damning statement against an individual or group. I would like some facts to justify this statement.

Chief Raike: Again, I was careful not to name the individual or group. We take it as a matter of principle. As a general statement, no individual or group should take unjustifiable chances in exposing the non-criminal element of society to the criminal element. We are told that you have to take chances in order to get the process of rehabilitation started.

Senator Hastings: I agree. But you are saying these groups are taking unjustifiable risks. I would like some facts concerning this.

Chief Raike: We considered it an unjustifiable risk to release a man, and then he turns around and commits murder.

Senator Hastings: In other words, we are using the same example.

Chief Raike: No, this is only an example which I can cite. As I say, we are not in a position to produce these statistics. We are recommending that an in-depth study be made to determine the number of offences committed by people out on parole. We are convinced it is a significant number. We see it every day. When we pick a man up for an offence there is a likelihood he is on parole.

The Chairman: Would you say 50 per cent of the people are on parole?

Chief Raike: It would be unfair to say. It would be only a personal opinion. I am concerned with the number of people we pick up who are on parole. This is not a personal opinion. This is an opinion shared by every chief in the province.

Senator Hastings: This is not a statement which is shared by the Commissioner of the RCMP.

Chief Raike: I would be very reluctant to take issue with the Commissioner. I certainly oppose his opinion. I am aware of his opinions which have been reported in the newspapers. I am speaking at the operational level now, senator.

Senator Hastings: I have great respect for the Commissioner of the RCMP. In response to this question at the time of our previous hearing he said: "I would not agree that any statement which held that the parole system has caused a significant increase in crimes. It is simply not true."

Chief Raike: I certainly disagree with the Commissioner 100 per cent. Do you agree with him Chief Tschirhart.

Chief Tschirhart: I have to disagree. I am from a small city of 26,000 people and on the average we have three parolees reporting to us. I go back to two exceptionally bad cases of rape last week, and these people are on parole.

The Chairman: For what were they on parole?

Chief Tschirhart: This I do not know.

The Chairman: They were picked up for rape?

Chief Tschirhart: They are paroled to us and we have no idea what offence has been committed.

Senator McGrand: You have talked about two men being picked up. What became of these men? Were they returned to penitentiary or are they still on parole?

Chief Tschirhart: This is a rape charge and they appeared before the court last Tuesday and are being held in custody for the Parole Board.

Senator McGrand: They have lost their parole now?

Chief Tschirhart: This has not been decided.

Chief Raike: If Senator Hastings doesn't mind, this is a very good example and if there is no objection I will pursue it.

The Chairman: Go on, please.

Chief Raike: We do not consider ourselves that knowledgeable on all aspects of parole, national parole or Ontario parole. But there are many instances where a man picked up for a criminal offence is now out on parole. We receive notice and we are limited to that notice. We receive notice that this man is convicted and his parole is now revoked back to the time he was charged. Conceivably, this could have taken six months, a year or, in extreme cases, two years. Now, if that man is out on bail for the additional charge his sentence time could be running out while he is on the street because his parole is only revoked when he is convicted of the subsequent offence.

Senator Hastings: That is quite true, but he has to go back and serve the full time from the date of revocation.

Chief Raike: Let me refer to this one: the parole will be cancelled as of November 2, 1971, the date he was arrested on the present charge.

Senator Hastings: The date the offence occurred is the date of revocation, and he could conceivably finish his sentence and have to go back and redo it to the date of the offence.

The Chairman: Say he had four years to do from that point, Chief Raike, he would still have the four years to do, would he not?

Chief Raike: Well, I hope you are right. As I say, we are not that knowledgeable on it, but we think that sometimes there are some loop-holes.

The Chairman: We are trying to get knowledge.

Senator Hastings: At page 9 of your brief you say "... the pattern in Canada would appear to be that the correctional system is releasing thousands of persons that the courts intended to remain in prison".

Last year, Chief Raike, the Parole Board released 6,278 men on parole out of a total of 30,000 inmates or about one in five and that is on all types of parole. You must remember there is a day parole, parole in principle, and so forth. Do you think that one in five justifies the statement that they are releasing thousands of persons?

Chief Raike: Senator, we must acknowledge that, perhaps, we erred in not distinguishing between the temporary absence permit—

Senator Hastings: I am not talking about the temporary absence permit; I am talking about parole.

Chief Raike: No, but, as I say, it was not until we caught it later on that we realized that there was a distinction made, but from a police point of view you must appreciate that when a man is released before completion of his sentence that, in our mind, is the same bag. We do not have the statistics—

Senator Hastings: On a temporary absence permit a man is not released. Let us just deal with parole. You make the statement:

... the correctional system is releasing thousands of persons that the Courts intended to remain in prison.

Chief Raike: Well, it is a question of semantics, then, senator, because, in our opinion, he is released; he is out on the street and he is liable and able to commit criminal offences. From a police point of view for prevention of crime to all effects and purposes he is on the street; he is released on temporary leave. The parolee is only released temporarily because he can go back in if he revokes his parole.

The Chairman: Or forfeits it.

Chief Raike: Or forfeits it.

Senator Hastings: Well, if at the time of sentencing a man is given four years for an offence, do you feel that it is the court's decision that he should remain in prison for four years?

Chief Raike: No, sir. I feel, as I say, the question of authority of responsibility should be commensurate. If it is the judge's function, and I believe it is, to set an acceptable and appropriate sentence for the criminal offence, I suggest that in a lot of cases judges are not fully familiar, as we are not, with the details of parole. If a judge sentences a man to five years he certainly does not entertain the possibility that he is likely to be out in two. I would suggest, if they are not more knowledgeable, that there is not enough information released in this respect.

I point out the few rather dramatic ones and we are not going to even touch on those, unless someone wants to, because they are just isolated cases, but we wonder how many other such circumstances go unreported. We honestly believe that the judge, in passing a five year sentence, may say "Well, he will do three and a half", but I suggest if the judge knew the man would be out in two he might have given him ten years.

Senator Hastings: I will come to that later, but what I am asking now is this: Is it your opinion that he should stay in prison for the five years?

Chief Raike: I would not answer that question, senator. I would have to know who "he" is. I would say he has to stay for five years if there is a strong likelihood that he is going to get out and commit another criminal offence.

Senator Hastings: Yes, but there is also the likelihood he could be out in three if he changed.

Chief Raike: Senator, you are a little more optimistic of human nature than I am. We were talking about this a little earlier; you are perhaps trying to put everyone in the one bag. If the man is liable or capable of being rehabilitated, then he should be given every opportunity. We are not punitive or vindictive; that is not our role. Our role is to prevent crime for the total good of society. We could not care less whether that man does his five years. We are only concerned with whether or not he is released too soon and commits further criminal acts.

Senator Hastings: Well, I believe that a man is capable of change and should be released back into society.

Chief Raike: Yes, some.

Senator Hastings: Well, 80 per cent of the inmates—

The Chairman: Are you saying the Parole Board is making some serious mistakes?

Chief Raike: I would be more charitable, senator. I would not say mistakes; I would say bad judgment, if I may talk politically for a minute.

The Chairman: You may talk any way you wish.

Chief Raike: I think their intentions are fine. I would not like to use the word naive, but I have to because we see these people at the grass roots. We are not asking for more say in the parole system; we

do not want it. However, I honestly believe—I have 25 years and my colleague has over 30 years experience in operational police work—and I sincerely believe that we have a rapport with the recidivist type that no one else has and for particular reason: they do not have to conn us. They will tell us “I can do five years standing on my head”. They will not tell that to parole officers, judges or anyone else, but I honestly believe we have a rapport with the dedicated criminal which no one else has, and, I think, this is where these opinions are formed.

Senator Hastings: I have one more question, Mr. Chairman, and then I will leave it.

At page 11, sir, you refer to “haphazard type of influence or control”. You further state:

It would appear that many conditions of parole are seldom enforced or adhered to.

And further on you say, “... present supervisory practices leave much to be desired”. And again you say, “... conditions that are seldom enforced”.

What leads you to make that statement?

Chief Raike: There is no question in my mind that parolees are not supervised. I am not putting down the Parole Board. The Parole Board is understaffed and overworked. With the number of parolees in a given area and the number of parole officers to supervise them there is no possible way they could do the job. I think there are roughly six or seven hundred parolees released in the Metropolitan Toronto area per year. At one time in the Metropolitan Toronto area there were 1,100 parolees, including some carried over from the previous year. I do not know how many supervisory parole officers there were to supervise them, but certainly we know from the parole violators that we report that the parole officers cannot do the job.

Senator Hastings: This again is an allegation against the National Parole Service when you say “... conditions of parole are seldom enforced or adhered to”. What conditions are not enforced?

Chief Raike: Well, if you put a restriction on alcohol it is probably because the man is in the penitentiary for that reason in the first place. That is a little naive. We find that invariably the parolees will break those regulations or conditions, and I will tell you quite frankly that we do not enforce them. If we find a man drunk, one of whose conditions of parole is to abstain from intoxicants, we do not invoke that condition unless he has committed an offence for which he should be arrested. Who does? Certainly not the supervisor; he never sees him.

Senator Hastings: That is one example. Do you have any others?

Chief Raike: Well, for example, the condition that the parolee has to be in before 12 o'clock at night and things like that. Such conditions are unrealistic. It is better they not be put as conditions in the first place.

Senator Hastings: Those are minor conditions. Let us deal with some major conditions. What about obtaining permission before changing a job or residence, is that condition ever enforced?

Chief Raike: No, sir, it is not, and when it is enforced it is enforced very lackadaisically. If a parolee phones up his parole officer and tells him he wants to go out of town the parole officer is too busy to look into the reason why or check out the man's excuses and he says, “Well, go ahead”.

Senator Hastings: Well, is he not dealing with a man he knows very well? In other words, a phone call in one instance may be satisfactory and in another he may want more information.

Chief Raike: I do not see how he can know the individual because of the volume of people he has to deal with.

Senator Hastings: He is carrying a workload of about 45, sir, and I would suggest out of the 45 around 15 that are classified as difficult. The other 30 he can deal with by telephone. I think we have to understand that we are always dealing with an individual human being. One parolee can handle alcohol and another cannot. The man who knows that is the parole officer. He knows his charges pretty well and he knows that a particular parolee can or cannot handle alcohol.

Chief Raike: I hope I have not misled you. I am not saying put conditions on the parole. I am saying leave them off because they are unrealistic conditions that are on there.

Senator Hastings: You say they are not being enforced.

Chief Raike: I certainly believe that, because they are not practical in the first place.

The Chairman: Or is it a shortage of staff on the Parole Board?

Chief Raike: I thought it was, but the senator now tells me that if they are only doing one in 45 then we have to put the pressure back on the Parole Board of having people who are not accepting their responsibilities. All I know is that the end result is that the parole supervisor is not riding herd on the parolees. I am sorry for that choice of words, but he is not supervising them properly in our area and in any area I have worked in. And I worked in downtown metropolitan Toronto where you get an awful lot of parolees. In the 19 years that I worked there I saw an awful lot of parolees and certainly in talking to these people they will acknowledge that the business of reporting to the parole officer is just a formality. The reasons for that I would hesitate to suggest, but they acknowledge it.

Chief Tschirhart: Mr. Chairman, is he reporting to the parole officer? He is not reporting to the parole officer. He is reporting to the police department, and the chief of police designates an individual to accept these reports. Now, you speak of various violations and special conditions. We will run into this mostly in domestic cases in which the man and wife are not getting along too well and we can see that “booze” has been the problem. Well, that is such a minor variation we don't report it. We will make a notation on the monthly report that comes in. I would not think that the policeman as such should be the one to whom he is reporting. Which one of us here has that stigmatism attached to the police that he is

the so-called bogey-man? Should we be put in that position for the parolee, the man you are trying to reform?

Senator Hastings: I am not advocating that the parolee should be reporting to the police.

Chief Tschirhart: But he is. He is reporting to the police.

Senator Hastings: We will come to that.

Chief Tschirhart: But he is reporting.

Senator Hastings: Once a month?

Chief Tschirhart: Yes, he is reporting once a month. Yes, as set out.

Senator Hastings: Is that necessary?

Chief Tschirhart: In our opinion, no.

Chief Raike: No. We cannot do a job on it and we should not be doing it.

The Chairman: Senator Hastings, would you find out from the witnesses whether they have parole officers in their own cities or whether they are having to carry out parole without them.

Senator Hastings: Well, in the city of Brampton is there a parole officer?

Chief Raike: I think so. I am not being facetious in saying that.

Senator Hastings: You think so?

Chief Raike: I think so. I know the name of the man we communicate with. I am not being facetious. Subsequent to leaving Toronto I have been the Chief of Police of Brampton for over six years and I have never met him. I have had considerable correspondence with him, but I have never met him. That is an example, if you like.

The Chairman: What about Barrie?

Chief Tschirhart: The closest parole officer to Barrie is in the city of Guelph, 105 miles away.

The Chairman: And are there parolees in Barrie?

Chief Tschirhart: Oh, yes.

Senator Hastings: To whom do they report?

Chief Tschirhart: To my inspector once a month.

Chief Raike: They report to one of my sergeants once a month in Brampton.

The Chairman: This is the only control on these men?

Chief Raike: That is all we know of.

Senator Hastings: Surely there must be parole officers in the district in addition to the police.

Chief Raike: Yes, but we are relying on our communication with him, and if this man revokes his parole conditions whatsoever the parole officer expects us to communicate with him. In other words, they give us authority we should not have. It is really not our authority. We cannot, for example, charge with breach of parole.

The Chairman: Senator Hastings, at this point I would like to know from these two men who have responsibilities for two cities of substantial size in Ontario just what the situation is. Chief Raike has said that there is a parole officer there but that he has not met him in over six years. On the other hand, Chief Tschirhart has said that the nearest parole officer is 105 miles away. Let us find out to what extent the parole system is able to keep control over the parolees. Do you mind following that line of questioning?

Senator Hastings: Well, in both instances I think we are referring to the national parole service. In one case it is 100 miles away and in the other case there is no national parole officer in Brampton.

Chief Raike: To all intents and purposes there is.

Senator Hastings: But nevertheless I believe that for the parolees in that area the parole services have designated a parole officer other than the police.

Chief Raike: Yes, sir. That is right.

Senator Choquette: Are these parole officers all necessarily federal employees?

Senator Hastings: No. They may be provincial employees or they may be from societies such as the John Howard Society or any suitable after-care agency.

Senator Choquette: But who has control over them if they are not doing their duty?

The Chairman: Let's find out if they are doing their duty or not. Who is the man in Brampton?

Chief Raike: The man in Brampton is Youngblutt. He is a full-time officer, I imagine.

Senator Choquette: But for whom?

Chief Raike: For the area.

Senator Hastings: Who does he work for?

Chief Raike: We don't distinguish between national and provincial, but I would assume it has to be provincial because for all

intents and purposes him mail from us goes to the local adult training centre, which is an Ontario reformatory, in effect.

The Chairman: Is he a provincial man or a federal man or what?

Senator Choquette: Who is his boss?

The Chairman: Or is he an agency man, someone from the John Howard Society, for example?

Chief Raïke: No. That is a different ball game. He is either a provincial or a federal employee because he is the official parole officer for the area. Frankly, we couldn't care less if he is paid by the provincial or the federal government.

Senator Choquette: In some cases perhaps he should not be paid at all.

Chief Raïke: You may be right. I cannot make that judgment, however. He may be doing a fine job for the five or ten people he is supervising.

Senator Choquette: We ought to find out who his immediate boss is and complain that, "Here, this man is going fishing and playing golf instead of doing his work, and what salary is he getting for that?" If that is the case.

Chief Raïke: That is a very important point, but it is not our prerogative because I have never even seen him. We do not know what he does. I must say he does answer his mail rather promptly. I would give him that.

The Chairman: But you have never seen him emerge in six years?

Chief Raïke: No, sir.

Senator Hastings: I would like to ask Chief Tschirhart, have you had occasion to meet with the National Parole Service in Guelph?

Chief Tschirhart: I did for the first time last week in connection with the two men I spoke of previously, parole violators. I met him for the first time. I have to go along with Chief Raïke that any correspondence has been prompt. But you speak of the John Howard Society. If there is any other organization with the city of Barrie, then I am ignorant of it. I don't know of any other organization as such.

The Chairman: Any other organization than the official parole officer.

Chief Tschirhart: That is right. I do not know of any other.

Senator Quart: Mr. Chairman, I was going to ask if anyone had listened to the program on radio, "Cross-Country Check-Up," about three weeks ago dealing with capital punishment. The opinions telephoned in covered a wide area but most of the people calling in seemed to be in favour of capital punishment, and they felt that

prisoners were being paroled too quickly. Most of the callers suggested that there should be a minimum of 25 years when a person is convicted of murder of a police officer and so on. They ridiculed the idea of sentences of seven and ten years being boiled down to two years when a person can be paroled.

Chief Raïke: Well, I must say, if I am not anticipating him, that I support Senator Hastings' view that letting people out prematurely does not matter, because the longer a person is in the less likelihood there is of his being rehabilitated.

Senator Hastings: You agree with that?

Chief Raïke: Yes, I do. I also acknowledge that the longer he is in there the less likely he is to be rehabilitated. I acknowledge that.

Senator Hastings: You believe that?

Chief Raïke: Oh yes, sir, I do. I thought you would be surprised.

The Chairman: There are different opinions here that I would like to see brought together.

Chief Raïke: We do not for a moment say that you are going to improve the chance of rehabilitation by keeping a man in there. We realize that there is less likelihood of rehabilitation, even if letting him out prematurely would lead to his committing another crime. I would say conversely the longer he is there the more dedicated he is going to become. I acknowledge that. But that is not going to change his mind.

Senator Hastings: But do you acknowledge there is a time when a man should come out?

Chief Raïke: We acknowledge there is a time if the man can be rehabilitated, but we are stuck with the impression that some will never be rehabilitated. That is what we are concerned about. I have a very definite opinion that there are certain types of criminals that do not commit criminal acts, not because they are rehabilitated, or that they have seen the light or anything else, but simply because they cannot stand being in that place and therefore they will not commit an act that is going to lead to their being brought back there. There is no question in my mind that an adequate or appropriate sentence deters a certain type of criminal, and I am suggesting the hard-nosed criminal, from committing certain criminal acts. That is where we are caught in the bind. Certainly you should give the man who is not a hard-nosed criminal, if you will excuse my phraseology, every chance but where do you distinguish? Any suggestion I make in here that it is irresponsible or unjustified is perhaps unfair in a way, but how do you decide? We think that we can tell, but then we see so many that quite obviously to us are that type. We wonder what they are doing out on the street.

Senator Hastings: But in your brief you say that the Parole Board has files upon which they can base objective judgments which is something that you do not have.

Chief Raika: They have, but there is also someone else who has. The judge also has this information so why don't they use his opinion? For example, when a man is considered for parole, they send out a form 4 or form 4A to the police department in which they ask everything except your opinion as to whether this guy should be on the street. They then ask how the community will react or absorb this man back in. But they should not be asking us that; they should ask the judge that.

The Chairman: Any other questions?

Senator Fergusson: I had some a long time ago which have been largely covered in the answers already given. However, I still have one or two that I would like to ask. I must say I was interested in the answers given to Senator Hastings because they covered many of the factors I am interested in. But it seems to me that you say you are given the responsibility of having parolees report to you and that you are given this by a parole officer and you pass this on to one of your sergeants. Am I right in that?

Chief Raika: We are given this by the Parole Board, but really in fairness the authority does not come from a parole officer. The authority comes in the form of a notice from the National or the Ontario Parole Board saying that the man is now out and giving certain details.

Senator Fergusson: There is no connection between you and the Solicitor General?

Chief Raika: No.

Senator Hastings: As a condition of parole, he must report to the police?

Chief Raika: Yes.

Senator Fergusson: So you are taking this on and you have this responsibility. What I find hard to understand is this; you say that although there are conditions, some of them you do not think are important enough and you do not report them, such as when you find a man drinking after hours. But that may be the very thing which leads him to commit another offence.

Chief Raika: May I answer that right there before you go on? We do this not because we consider them unimportant, but historically we have never had much response when minor violations have been reported. If we report an individual parolee three times for being out after hours, we might get some action, but here let me use Metropolitan Toronto as an example—you pick a man up for a violation and he is going to be at the other end of town tomorrow night and you are not going to get any repetition of his parole violation. I would say that in most situations you will get some action from the Parole Board for a minor violation if he continues to do it but on an individual occasion you seldom you get any action. Therefore the police wonder why they should concern themselves. I tell you quite frankly that in spite of the brush we have been tarred with we do not make it a practice of looking at parolees or reporting parolees because we cannot do so. We have

enough to do with the total criminal offender whether he is on parole or not. Contrary to popular belief, we do not say "That man is on parole. Ha, ha! we will keep an eye on him." We cannot do it and we do not do it.

Senator Fergusson: Well it seems to me that that is what you are charged with.

Chief Raika: It is not. The Criminal Code clearly indicates by omission that that is not our function. We cannot lay a charge of parole violation. We do not want to, and I do not want to leave the impression that we do. But clearly if we do not have the authority to do anything about it, why should we have the responsibility?

Senator Fergusson: You say that the Parole Board has shown bad judgment in certain cases but the members of the Board have been chosen because they have shown good judgment in other fields. But they are only human. Can your Association suggest any manner in which the Parole Board's selection could be improved? I would think they are doing the best they can.

Chief Raika: No, we cannot. We do not have solutions. It might seem unfair to criticize something if you do not have a solution for it, but personally I have rather a simple philosophy—if you expose all aspects of the problem, perhaps you can come up with a solution. I would like to think that what you suggest is correct and that they are doing the best they can. While we agree that they are probably doing the best they can we still say that they are in some instances taking too many unnecessary risks and too many unjustifiable chances. This situation is connected with cause and effect and we are seeing the results of it.

The Chairman: Have you any suggestion as to how we can correct that? Do we need more parole officers to act as supervisors? Is there any form of information that they are not getting at the present time?

Chief Raika: Well, two and two hardly amount to four if you increase the number of parolees without at the same time increasing the number of supervisors. We are still left with the very definite impression that the parolee needs some supervision but we certainly reject the big-brother approach. If the man is on parole, it is because on paper anyway he looks like a good risk so why should the police supervise him? Why should he report to us? If he is that good a risk he should be left out in society totally with somebody other than a police officer to supervise him and to counsel him because I think that is also necessary. I think he should rather be counselled than supervised.

The Chairman: And by somebody other than the police?

Chief Raika: It has to be somebody other than the police because on the one hand the Parole Board says, "We think you are a pretty good risk" but on the other hand they did not think he was that good a risk that he could be released on parole without supervision. That is something they reject.

The Chairman: In other words, in your opinion if people are out on parole under no circumstances should they have to report to the police or should the police be responsible for them. Is that what you are saying?

Chief Raike: Yes, but could we qualify that even more? Rather than go whole-hog and say that nobody should report, let us say that perhaps only your high risks should report to the police, but the obviously clean fellow, the one who we have no reason to believe is going to commit another offence, why should he have to report? We cannot include everyone because by the very volume we cannot do a real job on it.

Senator Fergusson: Do you think you can choose high risks like that?

Chief Raike: I am sure if the parole board is going into the details of the offence, as well as the number of offences, certainly they must deal in levels of risk, such as high, low or medium. They cannot say that everyone is as clean as the next person. I do not think human nature is that infallible.

Senator Choquette: When you say, "report to the police" I take it when a city is well organized the police in that instance means the municipal police. Is that correct?

Chief Raike: Yes, sir.

Senator Choquette: And the provincial police come into the picture only when there is no large city or centre and they report to the provincial police?

Chief Raike: Yes, the police department in the jurisdiction where he resides.

Chief Tschirhart: Going back to the matter of high risks, I am thinking of one particular area covered by the Code, the sex deviate who by virtue of the Code cannot associate in various areas of a community where there are children. I think that would be one instance where the police should be notified. There are no other cases cited in the Code as such. Dealing with murderers as such, I do not know how great a risk the majority of murderers are.

Senator McGrand: I have two questions. The first one deals with Senator Laird's question. You mentioned that parolees often commit offences shortly after they get out of prison.

Chief Raike: Yes, sir.

Senator McGrand: Is it the tendency for a parolee to commit this offence shortly after he gets out of prison whereas as the months go by this falls off? You can reply very shortly to this question.

Chief Raike: There is evidence that crimes are committed very soon after a person is released. If you are suggesting that the longer they are out the fewer the crimes that are committed, no. The statistics do not show this. If they are caught early they return.

Senator McGrand: You have answered my question. On page 5, the second paragraph reads:

To attempt, as some do, to further defend parole as an alternative to corrective detention, on a strictly fiscal basis, is also unacceptable. There can be no meaningful way of relating the human misery suffered by the many victims of criminal activity to monetary savings.

Your first sentence makes sense to me, parole is unacceptable and this may be for several reasons. But your second sentence includes the words "no meaningful way of relating the human misery suffered by the many victims of criminal activity to monetary savings." I cannot see the relationship. Misery suffered by victims at the hands of criminals is not part of police protection. This is a social problem. Today attempts are being made as part of our social conscience to do something for the person who has suffered at the hands of criminals. I cannot see any relationship. In your experience over the years in the police force, perhaps you could qualify what you mean by this.

Chief Raike: Yes, I would be glad to. I am well aware of the Law Compensation Act and the provision for compensating people who have suffered injuries and it comes back to the relationship of loss as it is related to money. If you have a man whose daughter has been raped or killed he can receive \$10,000 from the Law Compensation Board. Do you think there is any relationship? We cannot relate money to human suffering and loss of life or limb or brutal beatings which we see all the time. The fact that society has saved \$10,000 a year, if that is the closest estimate, we fail to see the relationship.

Senator McGrand: You are giving an example of something which would not happen once in one hundred years.

The Chairman: A man cannot receive \$10,000 for his daughter's death.

Chief Raike: Perhaps there is a difference of opinion here. If you saw as much human suffering as we do, perhaps you might understand our position. Perhaps this is the crux of the situation, we see it regularly. Our courts are swamped with this kind of case. In my municipality of 45,000 people, we had 2,800 criminal occurrences reported to us last year and many of these were crimes of violence.

The Chairman: How many of these did you catch?

Chief Raike: We do not use the word "catch". Sometimes you do not lay a charge at all. Sometimes you issue a warrant. In cases of juveniles you do not take them to court if it is their first offence. We use the word "concluded". Senator Hastings is smiling. This is not our term. It is a term used by the Dominion Bureau of Statistics. We concluded perhaps 56 per cent of our cases. This is a little higher than the average which never goes above 50 per cent. These are reported crimes. There are many crimes which are not reported.

If you want to pursue the cost factor further we read about savings when we release people on early parole, a savings of \$10,000 a year. This is a tangible saving. However, there is an intangible

factor which wipes out the tangible saving because you have to increase your policing costs. You have to apprehend these people when they commit subsequent acts. The intangible cost should be recognized as a balance to the tangible cost of \$10,000.

The Chairman: How many parolees do you have in your community of 45,000 and what was the figure for crimes last year?

Chief Raika: We had 2,800 reported criminal offences. These are not quasi criminal offences, but reported criminal offences.

The Chairman: How many parolees did you have in your area?

Chief Raika: Again, in a department of our size we cannot keep this type of statistic.

The Chairman: Surely you have an estimate.

Chief Raika: Frankly, up to now we have not bothered with these statistics because no one was interested in them.

The Chairman: We are interested in them now.

Chief Raika: In an organization of my size I cannot take time to look at the individual parole file. I would need another person to check files and determine whether or not a person has reported. If he has not reported automatically the notice goes to the parole officer. So unless I have a particular interest I would not look at the file.

The Chairman: What we are particularly interested in is to what extent do people on parole contribute to your problem in maintaining peace and order in the community.

Chief Raika: They contribute considerably. I would hesitate to go beyond that point.

The Chairman: Commissioner Higgett told us there were one million reported crimes committed in Canada last year and that altogether there were 5,000 people on parole. He indicated that the contribution to crime of people on parole was negligible.

Chief Raika: As I say, I do not wish to argue with the Commissioner. However, what volume of the total activity of the RCMP would be connected with municipal criminal activity?

The Chairman: I think he is dealing particularly with the three Prairie provinces. I am not sure about British Columbia, but certainly in the Prairie provinces they provide enforcement, aside from the municipal police, and they are in contact with them. He must have taken that into consideration with these figures, and in his consideration he must have taken an overall look at it.

Chief Raika: Let me draw a relationship between the areas in which I think I am more knowledgeable, and that is municipal police and the Ontario Provincial Police. The volume of criminal activity that the Ontario Provincial Police would pursue in comparison with the municipal police would be a very small

percentage. For example, and I would appreciate Chief Tschirhart's comments on this, one municipal police officer—and this is a figure I am pulling out of the air; a hypothetical figure—probably investigates more criminal activity than 15 Ontario provincial police, and I certainly would not worry about anyone digging that type of statistic out.

The Chairman: So you would say that the R.C.M.P. figures deal with a particular type of crime and not with the general thing—

Chief Raika: Certainly. Your sociologists will tell you that your crime is in your heavy urban areas. It is a sociological fact that the more you put people in a concentrated area, the more criminal acts occur. People cannot resist temptation, or whatever, but it is an accepted fact in criminology your criminal activity occurs in the congested areas, if you like, not in the Prairies or in Northern Ontario except in Kenora or other concentrated areas.

Senator Hastings: Chief Raika, the evidence from the Commissioner was that there were 1,110,000 offences against the Criminal Code in all of Canada in 1970. Now, in that year there were 639 forfeitures of parole.

Chief Raika: Well, I do not know where he gets his statistics, but I have the Toronto statistics and the Hamilton statistics.

The Chairman: Let us have yours.

Chief Raika: All right. As I say, during the year 1971 in the City of Hamilton 148 parolees were reporting to the Hamilton Police Department and out of this number 52 became involved in offences as set out in the appendix. We are not just giving you statistics; we will give you the individual offences.

The Chairman: We should like to have those.

Chief Raika: We also have the figures for Metropolitan Toronto. Now, the percentage of offences by parolees is going to be much less in Metropolitan Toronto and I would suggest why: Because of the total volume of criminal activity occurring in Metropolitan Toronto, you are not going to do as effective a job, quite frankly.

Senator Hastings: Would not the increase of crime be attributable more to the urbanization that is taking place in our society and the family breakdown which is manifest in your figures and not the parolees *per se*?

Chief Raika: Certainly it has to be a factor.

Senator Hastings: A much bigger factor than parolees.

Chief Raika: But are they isolated, senator? A very important point, in my opinion, is that the bulk of parolees go back into that environment.

The Chairman: Back into the criminal environment?

Chief Raika: Not only the criminal environment but the urban centres, the big cities; that is where they go. This is proven by the

fact that in Toronto, in 1971, 1,100 parolees were reporting to the Metropolitan Toronto police department.

Senator Choquette: Could something not be done to scatter them around?

An Hon. Senator: Oh.

Chief Raika: That is a good suggestion, senator. In my opinion they seem to be given the option of going where they want to go. I do not know this, but that seems to be the case.

Chief Tschirhart: I have to agree with friend the senator. For example, a city with a population of 26,000 such as the one I come from, could not accept any great infiltration of parolees. They are going to find their level; they can smell one another out. I fully agree with what the honourable senator says with respect to spreading them out.

Senator McGrand: There is a tendency on the part of people to go to the big cities. It is only natural that a parolee will say to himself "I cannot do anything down here in rural New Brunswick, so I will go to Toronto or Calgary and get a job".

Chief Raika: He is seeking the anonymity; he wants to be lost in the big city.

The Chairman: In other words, the parolee will not go to a place with a population of 1,000 but rather an area with a population of 100,000.

Chief Raika: The illustration I gave is that whether he is behaving himself or committing a criminal act he can do it in the east end of Toronto and if he is picked off he can move to the west end of Toronto. Of course, communications being what they are, if it is a criminal offence that will go on a central record, but if he is just stopped, for example, that will hardly go on his record and he will simply move to the other end of Toronto the next night.

The Chairman: Let us just get back to a basic question. What do you conceive parole to be? Perhaps I should give you a little guidance. Do you see parole as a particular way in which a man can serve his sentence, or do you conceive it to be an amelioration of sentence?

Chief Raika: I consider it—

The Chairman: No tricks.

Chief Raika: No. The senator asked if we think he should serve the five years. Obviously, no, he should not. Serving the five year sentence is not working and we acknowledge that it is not working; doing the full term is not working.

The Chairman: Because so many come back.

Chief Raika: Yes, even those doing the full term. You probably get as much recidivism—and I do not know this as a fact—even without parole.

Senator Hastings: It would be more.

Chief Raika: All right. In answer to the question I would say that if doing the full term is not working the function of parole should be to rehabilitate the man, but at the same time keeping control over him in case he does not prove worthy of it and, if he is not worthy of it, return him to prison. That, perhaps, is oversimplifying it.

The Chairman: Chief Tschirhart, do you have anything to add to that?

Chief Tschirhart: I think you have to study sentencing and parole. Is parole a part of the sentence or is it not a part of a sentence? I think this is what you have to look at. Are you going to call it sentencing or is it parole where you are free? There is no doubt in my mind personally that when on parole he is free.

Senator Choquette: Do you not think, sir, that parole should carry with it the connotation of rehabilitation, and that the Parole Board could say this to a potential parolee, "You are a westerner, but there is no"—

The Chairman: Let us not have any regional discrimination.

Senator Choquette: I am just giving an example, Mr. Chairman. The Parole Board could say, "We do not think you should go back into the large centre of Saskatchewan, but if you promise that you will become a wheat grower or there is an opening for such a man as you in such-and-such a part of Canada, if you take it we will release you on parole"—or something to that effect.

Chief Tschirhart: Firstly, I think, what has to be given thought—and I do not know if this is so; perhaps some honourable senators here can tell me—is that in the majority of cases a job is not available for the parolee on release and it is not until he is released that an attempt is made to obtain various positions for him.

I agree with what you say that if prior to release on parole there is a position for him it should be a part of his parole that he take it.

Senator Hastings: That is exactly what happens. If, on the basis of a community investigation, there is reason to believe that the parolee will not successfully find his way in the community the board will suggest to him that he make other arrangements or tell him that it is not in his interest to go to Barrie, or whatever, and that it would be better for him to go to this place, or that place. That is all included in his release plans.

The Chairman: Or to Flin Flon.

Chief Raika: In order not to be one-sided, honourable senators, I would suggest that it is not even fair to the inmate to release him without the assurance that he has a job, because if he is criminally oriented and he cannot find a job he is not going to live on welfare; he can resist everything but temptation, if I may put it that way.

Senator Hastings: You are generalizing again.

The Chairman: When we talk about parole, it seems to me, we are really dealing with two types of people. One is the inmate in a provincial institution for less than two years and the other is the inmate in the penitentiary. Now, when you talk about parolees are you talking about the people who have been convicted of serious offences and are serving their time in penitentiaries, or are you talking about the people who have been convicted of less serious offences and are serving their time in provincial institutions? This is one of the serious problems we have to deal with.

Chief Raike: Well, as we indicated—and this is perhaps wrong—we have a tendency to lump them all in the one bag, provincial or federally, but, really, is that so wrong in that for the sake of one day they might be in either.

The Chairman: Well, I am not asking you to draw that fine a distinction. What I am saying is this: Generally when we are talking about parolees we are thinking about people who have been sentenced to five years or more and who might get out in two years. There are a lot of people who are sentenced to less than two years—the average, I think, is nine months—who are going to get out in six months, or something like this. Now, which ones are you talking about? Which ones are your problem?

Chief Raike: We are concerned with the serious criminal offender, the fellow who is doing more than two years. We can live with taking a chance on paroling a petty thief or a man who commits a minor offence. We are concerned with the man who has gone to penitentiary. I would say in answer to your question that we are more concerned with that type of parolee.

The Chairman: The man who has potential for violence?

Chief Raike: Yes, sir, but not only violence, also serious criminal offences where violence is included. What is probably not sufficiently acknowledged is that there are very many people who are dedicated criminals. That is their occupation, no matter what you do for them in the way of parole, rehabilitation or anything else. I would suggest, although senators might object because we cannot prove it, that these people do a pretty good con job on judges and so probably do a pretty good con job on parole boards.

Senator Hastings: They try it on senators, too.

Chief Raike: on page 2 you concede that the Parole Board is in a much more objective position to render parole decisions because of their lack of involvement at the time. That releases you. And yet on page 8 you indicate that judges and juries who have previously spent hours and days in sifting and weighing all such information can more directly and realistically inform the Board in making decisions. Are you not being totally contradictory there?

Chief Raike: It might seem so, but there are three stages involved. When I say that we are less than objective perhaps I should also say that we think quite candidly that perhaps we can evaluate whether a man should be put away better than a parole board. Of course, that is open to dispute. What I should qualify here is that the judge is perhaps in almost as objective a position. We are not because we see the victim. So the suggestion should come forward

how can you be objective if you see the victim. But I am not at all sure that that is wrong, because then the appropriate sentence might be imposed. I suggest that a judge is somewhere in between the Parole Board and us in that position.

Senator Hastings: Of course the Parole Board do ask judges for recommendations and try to involve them in the parole process. That is what Mr. Street indicated in his evidence.

The Chairman: Senator Hastings, why don't you ask both of these gentlemen if they have ever been asked to give an opinion?

Senator Hastings: I believe he indicated earlier that he had.

Chief Raike: Oh, no. No, sir. I have not had a chance to read all of the previous record on these hearings, but I did notice one thing where Mr. Street says we are often asked. We are not. I can show you the form.

Senator Hastings: Mr. Street, in his evidence says, "We have to work with the police and we need to know what the police know about a man and the circumstances of the offence. We get that information. That is part of the work we do before we grant parole."

Chief Raike: No, sir. It is a matter of semantics, perhaps, in the questions that he asks us. Automatically, if a man gets in excess of two years—and I say "automatically" because in metropolitan Toronto they do it the day the man is convicted—a report is sent off right away in anticipation of its coming anyway and it speeds up paper work. They do automatically ask every police department involved for certain opinions and, if you like, I will read off the questions that are asked.

The Chairman: Yes, put that on record.

Chief Raike: On the first page they ask you to be concise, which I find a little ambiguous. But here, in any event, is the suggested content of the police report:

Your report would be of considerable assistance if it covered, as fully as possible, the following points:

- (1) Concise history of circumstances leading up to and surrounding the commission of the crime; method of operation; frequency with which this type of offence has occurred; violence involved;
- (2) Whether any accomplices, if so, their names and the dispositions in their cases; whether the inmate was the instigator of the crime or otherwise;
- (3) Extent or form of the recovery or disposition of the stolen goods; restitution or compensation made by the accused;
- (4) Attitude and cooperation of the accused after arrest;
- (5) Effect of the crime upon the victim (especially in cases of rape, theft with violence, etc.);

(6) The age, reputation and character of the victim, especially in that type of crime mentioned in sub-paragraph (5);

(7) Details of additional convictions not already showing on F.P.S. report prepared by R.C.M.P.;

(8) Previous reputation of inmate, including work record, family or marital background, use of liquor or drugs;

(9) The expected reaction or attitude of the public including community support or assistance if the Board were to grant parole;

(10) Any additional information that would be of value to the Board, e.g. involvement in organized crime.

Senator Choquette: Is that questionnaire sent out or forwarded to the police department at the time the parolee is about to be released or is being considered for release? Is that correct?

Chief Raike: I would say probably more accurately somewhere in between. Not at the time of the offence but when he now becomes eligible for parole.

Senator Choquette: That is what I had in mind. How would you have such answers to such questions unless you had a terrible record on every criminal, no matter what offence he might have committed?

Chief Raike: It is impossible. Not only that, but I think I indicated before that we cannot possibly give such a volume of information considering the number of paroles we do handle. We would not be doing any other police work.

Senator Choquette: Let us say a man is sent up for five years and after four years is about to be released. What would the judge remember about what came out in evidence unless he actually had it all in his own records so he could refer to it? I have seen hundreds of cases where a judge or a justice hears the evidence and says he will sentence the individual the following day, whereupon the fellow comes before him on the following day.

The Chairman: You are talking about magistrates now or provincial judges.

Senator Choquette: And judges of the Supreme Court as well.

The Chairman: The provincial judges handle 95 per cent of the cases.

Senator Choquette: And then the judges go back to Toronto and that is the end of it. Four years later what would a judge know about answering a questionnaire like that? What opinion could he give?

Senator McGrand: He could not.

Senator Choquette: Not unless he took particular note of the individual and said to himself, "He is a dangerous character and

when the time comes I am going to suggest that he should be left in prison."

Senator McGrand: He has to remember him as an individual.

Senator Choquette: Of course.

Senator McGrand: Not as a case.

Chief Raike: The police cannot remember him as an individual either. For example, when these questionnaires come in we have someone who was not connected with the case do most of the answering. With the bulk of work we have we can't say to a particular officer, "Well, you investigated that case so you make out this report." That would be impossible. Moreover, it is also true in the case of the police that after a lapse of time recollections are hazy and if it is to have any meaning at all the report should go out immediately after or shortly after the man is sentenced.

Senator Choquette: It can be done by probation officers in the case of juveniles.

Chief Raike: That is a very important point to develop, senator, because the judge sitting on the bench may very well want a pre-sentence report, and in our opinion that function should do this job.

Senator Choquette: That is right.

The Chairman: Chief Raike, have you any idea how many criminal cases you handled last year? Can you give us a rough idea of how many cases went in court last year?

Chief Raike: Strictly criminal cases?

The Chairman: Yes, from your department. And in how many of those cases were pre-sentence reports requested?

Chief Raike: I would estimate that we had about 1,300 criminal cases going into the court. So it would be impossible to tell you how many pre-sentence reports were requested. I can only give you my impression of the situation. My impression is that before the volume of cases got so out-of-hand there used to be more pre-sentence reporting. Now it is way down.

The Chairman: Is that your experience, too, Chief Tschirhart?

Chief Tschirhart: Yes.

Chief Raike: Because of the very volume of cases they just cannot handle the pre-sentence reports.

Chief Tschirhart: That is right.

The Chairman: In other words, the courts are just not getting pre-sentence reports in any substantial percentages. Is that what you are saying?

Chief Raike: They are not asking for them. They realize that the people doing the pre-sentence reports are swamped. The point is that if a judge asks for a pre-sentence report he cannot expect to get it much sooner than in three or four weeks' time. This means that cases have to be remanded and there is already an unreasonable backlog of remands.

Senator Hastings: Mr. Chairman, we have the evidence from the parole officers that in preparing their cases there is extensive preparation involving several interviews with the inmates, collateral community reports, including police, pre-sentence reports, et cetera. Have you two gentlemen never been consulted with respect to this by an officer of the National Parole Services?

Chief Raike: Never other than that.

The Chairman: Other than what?

Chief Raike: Other than this report.

The Chairman: You have already read the suggested content of the police report, but perhaps the covering letter should also be made part of the record. I would suggest that both sheets be put in as an appendix to the proceedings.

Hon. Senators: Agreed.

(For text of letter and "Suggested Content of the Police Report" see Appendix "B")

Chief Raike: I should qualify what I just said by saying that there was one case only. A man was charged with having his ability impaired. There was a rather serious consequence to the offence and his licence was suspended for two years. It was a rather serious consequence to the offence and his licence was suspended for two years. The only approach we got was as to whether we would consider parole in relation to the suspension of his licence. That is the only incident I can remember.

Senator Hastings: How many members are there on your police force?

Chief Raike: Fifty-eight.

Senator Hastings: And on Chief Tschirhart's?

Chief Tschirhart: Forty-two.

Senator Hastings: And you have never been consulted on this?

Chief Raike: As I say, other than that, no. If I might develop this a little further for your information, senator, we have in particular cases where we knew the individual rather well, and that is easier in a smaller municipality, but in particular cases where we knew the particular offender and knew his approach and where we were fairly sure that the man was a dedicated criminal and not likely to be rehabilitated—and here you will naturally ask who are we to say that—as a matter for our own satisfaction I have personally instructed the people to answer this very adversely saying that in no

way should this guy go out on parole, that he was the last guy who should go out on parole and so on. We have seen that man come out on parole. We have done that in test cases.

The Chairman: In other words, you are saying that your recommendations have had no effect on the decision of the Parole Board?

Chief Raike: That is my honest opinion. An important point to develop here is that this is the opinion of most chiefs, whether it is right or not, and in my opinion it is right, and we believe this.

The Chairman: What has been your experience Chief Tschirhart?

Chief Tschirhart: I am sticking to the letter of the law as it says on that. Over the last three years I could make various comments but I would not see any variation from what I am doing right now.

The Chairman: That is a little difficult for me to follow. Is it your opinion that it has made no effect at all on the decision of the Parole Board?

Chief Tschirhart: No, I cannot see any. I cannot see any difference between the way I used to do it and the way I am doing it now. I used to give my personal opinions of the person but now I am sticking exactly to the questions.

Senator Hastings: There is one other area I would like to turn to which is dealt with on page 9 of your brief where you indicate there is a great deal of compassion with respect to sentencing. First of all you start out by saying that there is over-compassion—there is compassion at the sentencing level and there is compassion at the parole level. With respect to the sentencing level, you indicate that where a man is convicted on a lesser charge or pleads guilty to a lesser charge he is accordingly judged on that. But the police in a case where your evidence is not substantial are quite agreeable to an accused copping a plea.

Chief Raike: No, sir, that is the biggest misconception in Canada today. We are tarred with this brush and we are not guilty. I gave a brief to the Ontario Law Reform Commission studying the administration of courts in Ontario and we do not go along with plea bargaining. We are tarred with this brush, as I have said, but it is not the case. I can give you a specific instance where we were accused of doing this and we objected to it, but we fully acknowledge that it is not our function to resist it. If the Crown Attorney does this with the defence and through the judge we feel that we cannot object to it, but we do not condone it.

Senator Hastings: You indicated earlier in your evidence that judges were not aware, and I think that is the term you used, of the actual sentencing. But a study was done in 1971 by a professor at the University of Toronto which indicated that two out of three judges in Ontario take into consideration the question of parole when they are sentencing and 30 per cent, which I consider to be a remarkable figure, admitted that they increased the sentences in order to ensure that Johnny would get his just due.

Chief Raike: Again, sir, I am always very skeptical of these statistics because I question whether they get them. I know my own opinion is not worth anything, but we have very close relationships with other chiefs in the Province of Ontario and I can assure you that the opinions expressed here are the opinions of every chief in the province. A very important point is that we have received no objections to these opinions and that does not bear out what you are saying. More realistically, how can a judge possibly sit down and figure out that if the sentence is five years he could serve 3½ but with premature parole or whatever it would be less. I would be lost in that situation.

Senator Hastings: But one-third of them admitted that they did it.

Chief Raike: One-third of the judges asked or one-third of all judges?

Senator Hastings: One-third of some hundred-odd judges.

The Chairman: Perhaps we should draw a distinction here. There are 95 per cent of the cases which go through the provincial courts.

Chief Raike: If I may, I should like to give you a very dramatic illustration of a case of plea bargaining. This case goes back over two years and it concerns a Brampton police officer—and I hope I am not subject to libel . . .

The Chairman: You are protected here.

Chief Raike: A Brampton police officer—and I will be very blunt—shot his girl friend; from very close range and very much under the influence of liquor he poured six shots into her. Three entered her body. He was off duty at the time, thank goodness, but he was still an employed policeman. We dealt with this offence as objectively as we could and we insisted on a charge of attempted murder, but as a result of the plea bargaining principle—and I honestly believe the principle is pretty sound, because it helps to speed up the administration of justice and as we all know there is a backlog in the courts—so in order to save the taxpayer money and to get the matter expedited as quickly as possible, a plea bargain was arranged by, and I must emphasize this, the Crown Attorney and the defence lawyer.

The Chairman: But not by the police.

Chief Raike: This is the point I am going to develop, because a relative of the aggrieved party sent us a very nasty letter suggesting that it was because he was a former police officer this plea bargain had been arranged. The bargain was that he pleaded guilty to a charge of wounding and he was sentenced to five years. But one year later he was back in the town of Brampton on a temporary absence—which I know we are not discussing here—and he was expressly prohibited on his temporary absence permit from visiting his municipality and he was explicitly restricted from taking intoxicants which they and we believed were the cause of his problem. However, to make a long story short, we were called to the scene, not because he was out on a temporary absence permit,

because we had not been aware of that, but because he assaulted in a minor way the man his wife was now living with. The excuse he gave us when we were called to the scene was that he wanted to see his children. However, we immediately called the penitentiary and they came and picked him up. But if you want to pursue this point about compounding the business, and in most cases as far as sentencing is concerned they bend over backwards, I have a letter from the Canadian Penitentiary Services in which the following paragraph appears:

Re: Davidson, Alexander

In your letter dated 22nd December, 1971 you indicated that no charges would be laid with respect to the incident involving Davidson while on temporary absence in 1971 unless new evidence came to light.

The reason we did not charge him was that we had no evidence. The common-law husband was on the couch and he was well under the influence of alcohol and he was in no way able to give evidence.

The Chairman: Who was the man who was assaulted?

Chief Raike: The man who was assaulted was now living with the wife. But he was in such a drunken state that he could not remember how he got his bruises or in fact that he had received them from this man at all. Also we felt that in the case of a man doing five years there was hardly much sense in charging him with common assault.

The institution has been reluctant to take disciplinary action until it is certain that no charges are forthcoming as it does not want Davidson to face disciplinary action at the judicial and institutional levels. Please advise if there has been any new evidence which would indicate that charges will be laid.

The Chairman: This is a temporary absence, not parole.

Chief Raike: Yes, sir, this is temporary absence. We have a tendency to lump the two together.

The Chairman: We have to endeavour to separate them.

Senator Hastings: Obviously they were endeavouring to ascertain whether you were going to take action and you did not, so, naturally, there would be disciplinary action taken by the institution. What is the point you are making?

Chief Raike: The point I am making is that if a man commits two separate offences why should he not be tried on both offences. In the first instance he has abused his privileges and in the second instance he has committed another act.

The Chairman: Is this not the situation: You do not have any evidence which would stand up in court to support a second charge against him?

Chief Raike: Yes, that is right. But they should not judge whether we lay . . .

The Chairman: No, just a minute, there are two things involved here, one is that he did certain acts which were an abuse of his temporary absence privilege; and two, there is an alleged assault.

Chief Raike: Yes sir.

The Chairman: Now, at that point, you say you have no evidence of the alleged assault because of the absence of credible witnesses, is that correct?

Chief Raike: That is correct, in part. I say we had insufficient evidence. We could have laid the charge.

The Chairman: This is the point I am making.

Chief Raike: That is right, under our law we would give the man the benefit of the doubt and we would not lay a charge.

The Chairman: You know he did it but you cannot prove it.

Chief Raike: We might be able to prove it. But we exercise a discretion on the grounds that if a man is already serving five years why charge him with common assault. If he were charged and found guilty of assault and penalized for it why should they not penalize him for the offence of abusing his privileges?

The Chairman: You do not know what they did; do you?

Chief Raike: I can only go by the wording which indicates that it does not want Davidson to face disciplinary action at the judicial and institutional levels.

Senator Choquette: So he remained out of the penitentiary as far as you are aware?

Chief Raike: No he did not.

The Chairman: He returned to the penitentiary but there were no further charges laid, am I correct?

Chief Raike: That is correct.

The Chairman: It is our understanding there were no further charges laid against him when he returned to the penitentiary as a result of his misbehaviour when he was paroled.

Chief Raike: There were no further charges, no sir. I did pursue this from the point of view of plea bargaining. We were criticized because this man was a former police officer and we were responsible for any plea bargaining. We are tired of this sort of thing. So we prepared a brief which indicated that we were against plea bargaining. I think what we indicated was that the judge should take more interest in plea bargaining rather than it being all cut and dried.

The Chairman: I have had experience both as a prosecutor and as a defence counsel, and if the judge who is hearing the case has not

been involved up to that point you can be in an awful lot of trouble with plea bargaining. The judge may not receive all the signals.

Chief Raike: Yes, I feel he should referee the matter.

The Chairman: An example of plea bargaining is where I, as defence counsel, go to the prosecutor and say: "All right, you can prove this much but you cannot prove the entire case. We are prepared to go this far with you provided you will be reasonable about the sentence". In our discussions we reach certain conclusions and we communicate them to the magistrate or judge. Do you agree this is what we refer to as plea bargaining?

Chief Raike: Yes.

Chief Tschirhart: The act of plea bargaining has been directed toward the police, but there is no plea bargaining as far as the police are concerned. There is no doubt that the Crown Attorney consults us after speaking with defence counsel. I would like to catch any of my officers plea bargaining with defence counsel.

The Chairman: How could he do that?

Chief Raike: I think it is a rejection of natural justice in that either a man is guilty of an offence or he is not guilty. Perhaps you will have to compromise and say if it is an included offence he may be guilty of that offence to a lesser degree. But when you use plea bargaining as an attempt to get a man to plead guilty to a lesser charge because you can not prove the original charge is objectionable to our department.

The Chairman: I am thinking of a particular case where three men who were feeling a little bright one evening decided to steal a parking meter from its place on the street—they placed it in front of another man's car who happened to be a friend of theirs. They were charged with theft of a meter. This was theft over \$50 and an indictable offence. These men were in positions where they had to be bonded. Because of this charge they were going to lose their bonding and perhaps their jobs. It was not that serious an offence. They could have been charged with pure public mischief which would not involve bonding. It did not work out as simply as we expected. Would you consider it improper at that stage for defence counsel to go to the prosecutor and say: "You do not want to take these people that seriously. Why can't we charge them with public mischief?"

Chief Raike: I would say it is not a function of the police to tell the Crown Attorney what to do. It is the function of the police to make them aware of all aspects of the act which was committed. From what these people have told us they were only kibitzing and we feel it is our responsibility to inform the Crown Attorney of this fact. But it is up to the Crown Attorney to decide if it is in the interest of society to lay a charge.

The Chairman: Plea bargaining, if it is done at all, should be done at the level of the Attorney General's representative. It would be common sense to inform the magistrate regarding what has been

agreed upon. Otherwise someone could be badly double crossed. I have seen this happen.

Chief Raike: We would go one step further and say it should be entirely out in the open, even in open court.

Senator Hastings: We have missed one very important area in our consideration which pertains to page 9 of your brief where it indicates that a parolee who is charged with another offence should be re-incarcerated pending the disposition of the charge. How do you reconcile this to the traditional rule which says that you are considered innocent until proven guilty?

Chief Raike: This is a difficult question which is worthy of consideration. We feel that once a man has committed a serious criminal offence for which he has been convicted and sent to penitentiary he has to forfeit some of his rights to individual liberty. In our opinion, this is part and parcel of the total package. We appreciate the fact that it is contrary to that concept. Do you not deprive him of many other rights which he enjoys?

Senator Hastings: You certainly do, you deprive him by suspending his parole. You deprive him of a hearing. He can be returned to prison and his parole is revoked without any hearing with no opportunity to cross-examine or face his accusers. You are recommending additional discrimination.

Chief Raike: You do not do this automatically. After all, you release him on parole purely on opinion in any event.

Senator Hastings: As a citizen, surely he is entitled to some rights?

Chief Raike: Let me put it the other way, then: if that man is not dealt with—and he is not dealt with when he commits a further criminal act—are you protecting society?

Senator Hastings: You are judging him guilty.

Chief Raike: Not actually. We have not judged him guilty. We have judged him guilty of the first offence is what you are saying. We knew he was guilty of the first offence or he would not be on parole. What we are saying is we have taken away some of his rights but he lost those rights when he was convicted; not tried on the first offence but convicted of the first offence, so you have to take away some of his rights. What you are now saying is that we give everything back to him. I suggest when we put him on parole we cannot give everything back to him. You can give everything back to him temporarily, but the moment he is charged—and from a grass roots point of view we believe that very few are charged unless they are pretty guilty, but this does not change the concept— but from the moment he is charged with a subsequent offence he can get bail and he can remand a hearing and, consequently, can stay out on bail for two years before the parole revocation is dealt with. We think this is exposing the rest of society to danger.

Senator Hastings: But when it is dealt with, sir, he goes back to the date it was actually revoked.

Chief Raike: But in that two years society has lost a lot of its privileges in being protected from this man who was convicted the first time.

The Chairman: Yes, but he may or may not have been found guilty of the second charge.

Chief Raike: Well, let us compromise a little and suggest that perhaps subsequent charges should be dealt with as quickly as possible. We do not object to the principle. We object to the fact that this man can stay out for a further two years until he is convicted of the subsequent offence.

Senator Hastings: In your last statement you say:

Meanwhile, of course, the parolee is free to continue his criminal activities, if he so chooses.

Could you have also said “Meanwhile, of course, the parolee is free to continue within the law if he so chooses?” Why did you say it that way? Are all of these parolees out robbing and stealing?

Chief Raike: In our opinion a good percentage of them are, and also, in our opinion, not only with parolees, but with criminal offenders, relating to the matter of bail—and this, of course, we are not objecting to—we find, from actual experience, that a lot of people who are out of bail get unreasonable remands for various reasons. We put this in our brief to the Law Reform Commission. When you get unreasonable remands there are witnesses lost to the prosecution and memories get a little dim, but, most importantly, we find a lot of these people are going out and committing further criminal offences to hire lawyers of good standing to defend them. This is our concern.

Senator Hastings: You state in your brief that you have difficulty being objective, being involved with the crimes and the victims. Would you say the same applied to your evidence here this morning?

Chief Raike: I would say this, senator: we have not appeared here to prove anything. We have appeared here to give our opinions, fully recognizing that we do not have supporting statistics; but when I see a bunch of statistics from certain people who have taken a cross-section, and knowing what we see at the grass roots level, we very much suspect those statistics.

The Chairman: Are there any further questions?

I should like to thank you, Chief Raike and Chief Tshirhart, for appearing before us this morning and for your frankness and completeness in answering the questions. You have been of great assistance to us.

The Committee adjourned.

APPENDIX "A"

ONTARIO ASSOCIATION OF
CHIEFS OF POLICE

April 18, 1972.

The Standing Senate Committee on
Legal and Constitutional Affairs,
OTTAWA,
Canada.
K1A 0A4

Honourable Sirs:

On behalf of the Ontario Association of Chiefs of Police, may we respectfully present the views of our organization with respect to the Canadian Parole System as it relates to and influences the administration of justice, in general, and law enforcement agencies, specifically; with the hope the contained submissions may be of some assistance to you in your deliberations.

As most of the contained opinions will, for obvious reasons, be the practical views of administrative, supervisory, and operational law enforcement officers; gained, to a considerable extent, from day-to-day contact with criminal offenders and the victims of criminal offences, as well as exposure to the effects on the immediate community wherein the offences are committed, it is perhaps understandable that these opinions will at times conflict with the more theoretical and altruistic approach of other segments of the criminal justice system less directly involved with the consequences of criminal activity. We fully appreciate that this very lack of direct involvement by members of the Parole Board with the offence itself, the offender, and victim, at the time of the commission of the offence; together with a more complete picture of all circumstances worthy of consideration, puts those responsible for making subsequent parole decisions in a more objective position for rendering such decisions. We would, however, like to preface our submissions with the observation that while we do not believe there is any significant conflict as to the ultimate basic objective of the two approaches, there is a very considerable difference of opinion as to the more realistic methods of achieving these objectives. As is not uncommon, much that is supportable in theory does not always stand up well when exposed to the stress of practical application.

At the risk of over-simplification, our position is:

- (a) present parole practices have diluted, if not abrogated, the effectiveness of other segments of the criminal justice system, particularly the courts and law enforcement agencies;
- (b) present parole practices have demonstrated an unreasonable and inequitable balance of concern for the criminal offender; with the unavoidable effect of producing an accompanying apparent decrease in concern for the rest of society in general, and potential victims of future crimes in particular.

It is not our intention to be hyper-critical of these practices, but we feel in all conscience that we must offer our opinions as to their effectiveness and consequences; with the sincere hope that they may be of constructive assistance to the Honourable members of the

Senate committee. We shall, of course, attempt to develop in detail our various reasons for assuming this position.

Law enforcement officers are no less compassionate than other members of society but, as the result of the aforementioned direct contact with the victims of crime, quite unavoidably, develop a very strong feeling that a more equitable balance of compassion is indicated, to give the criminal offender a little less and the victim a little more than the disproportionate shares of consideration they now receive. Among other reasons, this feeling is formulated by the fact that, for the most part, the offender is a volunteer to the act, while the victim, in most instances, is not.

Many defenders of the extension of parole opportunities to apparently less-than-eligible applicants support their position on the grounds that chances must be taken if there is to be any hope for an improvement in the rehabilitation process. There is, of course, some merit in this proposition, but, there is a world of difference between taking reasonable calculated chances as compared to out-and-out risks based on no other justification than the hope that such risk-taking will eventually improve the system. It would appear that based on antecedent histories, records, and personality traits, of many of those released on parole, too many fall into the latter category. The credibility of putting faith in individuals, who have consistently demonstrated an inability to justify such faith, is difficult to comprehend.

It will, of course, be pointed out that members of the National Parole Board, as previously mentioned, have available to them a more complete and comprehensive dossier on each individual under review and therefore are in a better position to more accurately evaluate such risks. However, we would question the judgment of any individual or group taking unjustified chances in exposing innocent victims in our society to loss of life, security of person, and the right not to be deprived thereof, except by the due process of law, as provided for in our Canadian Bill of Rights.

To attempt, as some do, to further defend parole as an alternative to corrective detention, on a strictly fiscal basis, is also unacceptable. There can be no meaningful way of relating the human misery suffered by the many victims of criminal activity to monetary savings. There can be little doubt that our present penal system leaves much to be desired, but to attempt to improve the system by an increase in the use of parole is, in itself, a contradiction in terms.

While we do not take serious issue with the sociological theory that certainty of apprehension is more of a deterrent than severity of penalty, we must speculate as to what point this hypothesis becomes invalid in practical application. Certainty of apprehension would hardly continue to be an effective deterrent if not accompanied by sufficient or reasonable penalty, or if only minimal punishment was consistently applied. Very few habitual criminals experience embarrassment or feel that they are being penalized by being subjected to the initial stages of the administration of justice process, but very few habitual criminals can reconcile themselves to doing hard time (in a penal institution); most habitual criminals find street time (on parole) is: "a breeze". The professional criminal, and probably most other habitual offenders, while on the one hand rejects the probability that he will be caught, on the other hand entertains the possibility and balances the benefits of the act against

the likely resultant penalty. Severity of penalty for certain criminal categories, most assuredly, confines many criminals to the lower echelons of the ladder of criminal activity.

To support our contention that time spent on parole undermines to a considerable extent the deterrent effect of the total sentence, we refer to the report of the judicial division of Statistics Canada that 40% of parolees commit indictable offences and are returned to prison within five years after their release. While we appreciate that this does not indicate that these offences were necessarily committed while on parole, it is a strongly held view in police circles that there is a very unacceptable rate of crime committed by parolees. When one considers that some crime is not detected, much crime goes unreported, a large volume of crime is unconcluded (offender not apprehended or identified), and some offenders are not convicted; given the above mentioned percentage of parolees returned to prison, one can only speculate with alarm as to what the true rate of recidivism among parolees must be. There is also a considerable consensus of opinion in law enforcement agencies that there is an inescapable relationship between more lenient parole practices and the considerable increase in criminal activity. We certainly question the criteria of success used as a basis of reports of high success rates resulting from current parole practices.

From a police point of view, one of the incongruities of present parole procedures is the failure to solicit the opinion of law enforcement agencies, with respect to the feasibility of granting parole to a particular offender. It is true that question 9, on National Parole Board form PS-4, requests police opinion on the expected reaction of the public if the Board were to grant parole, but, surely under presently established guide-lines, this is a question that comes only within the scope of responsibility and qualifications of the Board itself to define. In any event, it is felt that very little credence is given to police opinion on this point. In addition, it is quite unrealistic to expect that an accurate and meaningful assessment of the circumstances may be received in such concise form. The very volume of such requests prohibits a police department of any size from replying in as thorough a manner as should be required. And even if it were possible to reply to all such requests in extensive detail, it is questionable that such a format could inform and prepare any Board for making a decision as realistically as a Judge, or Judge with Jury, who has previously spent hours or days in sifting and weighing all such information, in a more direct way, before passing sentence.

Though the Courts and the Parole Board are two distinct segments of the criminal justice system, many of their functions are inter-related, particularly consideration of the possibility of rehabilitation of the offender. This over-lapping of responsibilities is, of course, unavoidable but in too many instances results, for want of a better description, to compounding the compassion. As an illustration: it would not be uncommon for a Court, being presented with sufficient evidence to substantiate a conviction on, for example, attempted murder, to accept a plea or render a verdict on an included but lesser offence, such as wounding; subsequent review by a Parole Board, regardless of the fact they are provided with all circumstances of the offence, invariably is based on the lesser offence. This is compounding the compassion and, in our view, annuls the function of the Court. This is not to infer that Courts are

less compassionate than Parole officials. As a matter of fact, a recently reported statement of counsel for the United States National Council on Crime and Delinquency opined that: "Indications in the United States is that the Courts have released hundreds of persons that the correctional system wanted to retain." Conversely, however, the pattern in Canada would appear to be that the correctional system is releasing thousands of persons that the Courts intended to remain in prison.

Another matter our Association believes worthy of consideration is the present procedure for dealing with individuals charged with a criminal offence while on parole. At the risk of treading the thin line between individual civil liberties and the good of our total society, we respectfully contend that the parole of anyone charged with a criminal offence should be suspended pending the disposition of such charges and a full Parole Board review. With the understanding that there are those who will oppose such practice as a violation of the natural justice tenet of: "Innocent until proven guilty", we would emphasize that, in the interest of the entire community, some individual rights must be forfeited when a person has been convicted of a criminal offence and is still under sentence. At the present time, the practice would appear to be for the parole authorities to take no action towards revoking the parole of a person charged with a criminal offence until final disposition of the charge against him. Under present Court procedures, including avenues for appeal, it is not inconceivable for such final disposition to be delayed up to two years. Meanwhile, of course, the parolee is free to continue his criminal activities, if he so chooses.

No parole presentation would be complete without some reference to the matter of supervision. We do not consider it our prerogative to criticize this aspect of the system, except to defend those involved on the grounds that the low ratio of supervisory personnel to the very high volume of parolees makes it quite unrealistic to expect other than a haphazard type of influence or control. It would appear that many conditions of parole are seldom enforced or adhered to, and the bulk of parole violations are only brought to light as the result of police investigations into other incidents. No police department is in a position to check on parolees, *per se*. To do so would be to neglect other areas of responsibility. Law enforcement officers, in general, recognize it is not their authority or responsibility to supervise conditions of parole, except when they relate to reporting to the police, or involve criminal activity or associations. It, therefore, must follow that the number of parole violations referred to parole authorities by the police can only be a small portion of the total volume of such violations. The inescapable conclusion being: present supervisory practices leave much to be desired. We appreciate that a degree of informality for this function may be intended but would raise the question of the practicality or effectiveness of prescribing conditions that are seldom enforced.

Before leaving the matter of police involvement with those released from penal institutions before expiration of their sentence, reference should be made to a possible oversight with respect to the operation of the Temporary Absence program. In many instances, copies of Temporary Absence Permits are not received by the pertinent police department until after the permit holder is due back at an Institution. Apart from the fact that the police are not aware the person is in the community, it does not give the person

released the full benefit of being legally out of custody. If recognized by a police officer or brought to the attention of the police for any reason, police records would indicate that he should still be in custody. No speculation is necessary as to the embarrassment or more serious ramifications that might ensue.

In summation, we would offer our concurrence to what would appear to be unanimous acceptance of the fact that there is much room for enlightenment and reform in our present criminal justice system but would respectfully suggest that, in our haste to make up for past omissions and lack of progress, we are too hastily grasping at what might well be counter-productive innovations; in a form of whip-saw reaction to our previous neglect, to the detriment of meaningful, albeit slower, progress.

There can be no doubt that one of the ultimate objectives of justice is to restore the offender to society, but we are deeply concerned over the tendency to reach for this goal prematurely and irresponsibly at a considerable cost to the rest of society.

Rather than itemize a number of recommendations as an addendum to this report, we would humbly recommend that the Honourable Senate Committee consider the feasibility of instituting a statistical study into any of the matters raised in this presentation that it feels are worthy of further consideration.

Respectfully submitted,

S. W. Raike,
Chairman, Legislation Committee,
Ontario Association of Chiefs of Police.

APPENDIX "B"

NATIONAL PAROLE BOARD

162 Woolwich Street,
Guelph, Ontario
12 June, 1972

Chief of Police,
Brampton Police Department,
Brampton, Ontario

Name and No. : (name withheld)

Institution: Guelph Correctional Centre

Birth date or age: 20 01 55

F.P.S. No.:

Date(s) and place(s) convicted: March 27, 1972, Niagara Falls, Ont., March 30, 1972, Brampton, Ont., May 29, 1972, Mississauga, Ont.

Before: Judge Roberts, Judge Young, PJ

Total Sentence: 1 yr def. and 6 mos. indef. 3 mos. consec. 1 yr conc.

Offences: Auto Theft, Auto Theft, Break Enter Theft.

Dear Sir:

It would be appreciated if you could provide the Board with a report in single copy of the circumstances surrounding the commission of the offence(s), together with your comments, and forward it to our Representative indicated below. A suggested report content is overleaf.

If your Department or Detachment did not investigate the case, please forward this request to that which did, if known to you. If unknown, please forward this form to our Representative indicating the fact.

Yours truly,

John H. Lawrence,
National Parole Service

SUGGESTED CONTENT OF THE POLICE REPORT

Your report would be of considerable assistance if it covered, as fully as possible, the following points:

(1) Concise history of circumstances leading up to and surrounding the commission of the crime; method of operation; frequency with which this type of offence has occurred; violence involved;

(2) Whether any accomplices, if so, their names and the dispositions in their cases; whether the inmate was the instigator of the crime or otherwise;

(3) Extent or form of the recovery or disposition of the stolen goods; restitution or compensation made by the accused;

(4) Attitude and cooperation of the accused after arrest;

(5) Effect of the crime upon the victim (especially in cases of rape, theft with violence, etc.);

(6) The age, reputation and character of the victim, especially in that type of crime mentioned in sub-paragraph (5);

(7) Details of additional convictions not already showing on F.P.S. report prepared by R.C.M.P.;

(8) Previous reputation of inmate, including work record, family or marital background, use of liquor or drugs;

(9) The expected reaction or attitude of the public including community support or assistance if the Board were to grant parole;

(10) Any additional information that would be of value to the Board, e.g. involvement in organized crime.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable J. HARPER PROWSE, *Chairman*



Issue No. 10

THURSDAY, JUNE 15, 1972

Tenth Proceedings on the examination of the parole system
in Canada

(Witnesses and Appendix—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*

The Honourable Senators:

Argue	Lang
Buckwold	Langlois
Burchill	Lapointe
Choquette	Macdonald
Croll	*Martin
Eudes	McGrand
Everett	McIlraith
Fergusson	Prowse
*Flynn	Quart
Fournier (<i>de Lanaudière</i>)	Sullivan
Goldenberg	Thompson
Gouin	Walker
Haig	White
Hastings	Williams
Hayden	Yuzyk
Laird	

**Ex Officio Members*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, June 15, 1972.

(17)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Burchill, Fergusson, Hastings, Laird, Lapointe, McGrand, Quart, Thompson and Williams.—(10)

In attendance: Mr. Réal Jubinville, Executive Director (Examinations of the parole system in Canada); Mr. Patrick Doherty, Special Research Assistant.

The Committee proceeded to the examination of the parole system in Canada.

The following witnesses, representing the St. Leonard's Society of Canada, were heard:

Mr. Robert E. Barnes, Q.C.,

President.

Reverend T. N. Libby,

Executive Director.

On Motion of the Honourable Senator Prowse it was Resolved to include in this day's proceedings the brief submitted to the Committee by the St. Leonard's Society of Canada. It is printed as an Appendix.

At 12.20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, June 15, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable Senators, we are this morning to hear a brief from the St. Leonard's Society of Canada, an association which concerns itself chiefly with the setting up of "half-way houses". On my immediate right is Mr. Robert Barnes, President of the association, and on his immediate right is the Reverend T. N. Libby, Executive Secretary of the association. Mr. Barnes tells me that he presides at the meetings but that the real work is done by the Reverend Mr. Libby.

Honourable senators have had the brief for some time. Our ordinary procedure in these cases is to take the brief as read and then to ask you, Mr. Barnes, and then Reverend Mr. Libby to make any comment you wish. Then the senators will be free to ask questions on any part of your brief on which you might care to make some additional comment.

(For text of brief see Appendix)

Mr. Robert Barnes, President, St. Leonard's Society of Canada: Mr. Chairman and honourable senators, by way of introduction I can tell you very briefly that the St. Leonard's Society of Canada is the co-ordinating body of a group of ex-prisoners' half-way houses. I think the modern phrase is "community based residential centres", but I still like to call them half-way houses. There are 13 in operation presently, literally across Canada.

The theory about an ex-prisoner half-way house is that it provides an intermediate stage for the released prisoner, between a prisoner and, hopefully, his re-integration into society. The difficulties that a man encounters when he comes out of prison, perhaps having been there for many years, are too obvious to elaborate on. The facilities that St. Leonard's halfway houses offer endeavour to make this transition a period that will aim the man back into society and not back into a correctional institution.

The movement is growing very rapidly and although there are 13 halfway houses created and now in operation, there are 13 more in various stages of organization. We have been in operation about ten years. We started in Windsor, but we now have a half-way house in Vancouver, another in Halifax, most of the rest are in Ontario, and there are two in Quebec.

Honourable senators, doubtless you have read our brief. The brief was set up in accordance with the terms of reference and the invitation to present briefs. The problem occurs to me really as a layman in the correctional field. I am a civil trial lawyer; I do not handle criminal cases; I have no correctional expertise. I just happen to be chairman of the board and I look at this kind of problem from the practical side.

When one looks at parole, as the brief describes, it is a process of serving a sentence in the community. It is trite, but it is important that that distinction be understood. When one looks at parole, it is difficult to disassociate parole from the sentencing process, because they are part of the same process.

The simple fact of the matter is that our courts today—as a defender of the trial system, I believe this—are splendidly equipped as a fact-finding body to decide the guilt or innocence of a person accused. I am not at all persuaded that our courts are as well equipped to decide what to do with the convicted. I am persuaded that they do not have the training and expertise. I, as a lawyer, if I were appointed to the bench, would be the first to recognize my own disqualification in that particular field. We have long assumed that the trial judge is the proper person to sentence the man, but if you talk to trial judges they might be the first to express some real reservations in that particular area.

Honourable senators, I do not propose to talk for more than just a moment on the problem of sentencing, which I do not think can be divorced from parole. One must ask one's self why we sentence a convicted offender. A judge can conceivably sentence him to probation—which is not a sentence at all—or to a term in prison. But, why sentence him? Vengeance? We really have not very much to say about that, because that is pretty well an outmoded view. Deterrent? I do not speed if I see a radar trap; I suppose that is a deterrent; but I am sure that the man who kills his wife in a drunken rage on a Saturday night is not deterred by the presence or absence of any penalties. Beyond that, you can prove or disprove almost anything statistically, as far as the deterrent effect of sentencing any person is concerned. This does not help us very much.

Surely, if you are looking at sentencing in a rational, constructive way, should not the object be to prevent the repetition of the offence by the offender and to prevent the behaviour pattern that led to the commission of the offence, by the most effective means? Of course, there is the problem: What is the most effective means?

I put it to you, ladies and gentlemen, that perhaps some consideration should be given to recommending a sentencing

tribunal that would be a different tribunal from the convicting tribunal; and that quite possibly the sentencing tribunal would be closely involved with what we call the parole system. In fact, today that is what we have. It is an open secret that what is happening today is that a judge will sentence a man to a term of imprisonment. Perhaps the man will appeal the conviction and perhaps the Crown will cross-appeal because the Crown feels that the term is not long enough. The appeal may be dismissed and the court of appeal may feel that the sentence is quite inadequate and double the sentence. Very frequently, in a matter of months, when the sentence has been for many years, the convicted person will be serving his sentence in the community.

To the unsophisticated such as you and I, however, he is really free under some restraints. The National Parole Board, the provincial parole boards and, to some extent, the Department of the Solicitor General, and the Penitentiary Service, decide the length of sentences. We in the St. Leonard's Society do not criticize this process. On the contrary, we think that the sentence, to the extent practicable, ought to be served in the community. We do not at this stage consider that the sentencing process should be divided in the present manner, which in some respects is not logical. The whole concept, in our opinion, ought to be re-examined. We feel that a sentence ought to be served in the community, consistent with the safety of the residents of that community and the correction of the behaviour pattern of the individual if, indeed, that is possible. The process ought to be orderly and contain a degree of sophistication, which is impossible as far as the trial judge is concerned, because he is not a social worker but a lawyer.

I realize that the BNA Act presents certain problems respecting the appointments of judges. I do not think, however, that they are insuperable. Appointments to a sentencing tribunal, board or commission can be made federally. This can be overcome by appointing a person a judge, so-calling him but restricting his activities. This is not part of our brief. It is beyond our frame of reference.

The Chairman: No, your reference is quite open.

Mr. Barnes: We would like you to consider including in your recommendations something along the lines that the function of the criminal courts in indictable matters involving a penalty of two or more years imprisonment be limited to the finding of guilt or innocence. The sentencing process would then be handled by a special tribunal. The duration, place and nature of the sentence, within an institution, in the community, or partly in both, should be determined by that sentencing tribunal. The tribunal should, right from the outset, make the offender aware of the objectives of and the reasons for the sentence imposed upon him, so that he knows why he is being sentenced and what is expected of him. I say as a lawyer that there should be reasonable appellate review machinery with regard to sentencing and it should be maintained and adapted to the sentencing process. That is contained, at least obliquely, in our brief.

In my opinion there is nothing revolutionary in these suggestions. We have been at this game for 10 years and there is some experience behind the suggestions.

The Chairman: Thank you.

Senator Laird: Mr. Chairman, before Mr. Libby starts, could I point out one thing to Bob. Barnes who, by the way, is a friend of long standing? I doubt whether he is aware of this. Incidentally, I should preface this, Mr. Barnes, by saying that I have not been involved in criminal work for years. However, somehow or other I turned out to be chosen to propose the resolution for the examination taking place here. I also introduced the omnibus Criminal Code amending bill which, after a struggle, was passed yesterday and probably will receive royal assent later today. Contained in that bill is an amendment regarding sentencing, of which you may not be aware.

Mr. Barnes: I am not aware of it.

Senator Laird: A judge can now, even if there is a plea of finding of guilty, refuse to record a conviction. As a result, the prisoner has no criminal record, which is a rather startling change. I thought perhaps you might be interested in knowing that before we pursue this.

The Chairman: You are referring to absolute discharge.

Senator Laird: Yes, that is what it amounts to, I suppose. It was intended to provide for the situations of young people and the desire to avoid their having criminal records.

Mr. Barnes: I think that is a most constructive amendment.

The Chairman: It will probably come into effect early in July.

Reverend T. N. Libby, Executive Director, St. Leonard's Society of Canada: Mr. Chairman and honourable senators, I do not think there is really a great deal that I have to offer in addition to Mr. Barnes' remarks. I thought perhaps I would take a moment though to give you some background of the St. Leonard's Society of Canada in order that you can see the context in which we have submitted the brief and are discussing the whole issue of parole.

We began in Windsor, just 11 years ago, as the first half-way house, or community residential centre, in Canada, dealing with released inmates from both federal and provincial institutions. We now have 13 houses in actual operation. Approximately 12 or 13 others are either chartered and working on an out-client basis in their own communities, working inside the institutions or are in some initial stage of formation in their community organization area. We also moved into several new types of programs, particularly self-help programs in which ex-inmates become involved in the community. We are very seriously considering married housing modelled after the St. Leonard's housing in London, England, which operates approximately 50 chapters providing suitable accommodation for families of inmates during the husband's time in prison and where he can join them for a period of time after his release while he becomes acclimatized to the community.

We have in Windsor an operating group of wives of inmates, who are concerned with the very practical aspect of providing transportation. Through close co-operation with St. Clair College in Windsor,

they have now made arrangements to provide transportation on a once-a-month basis to the Kingston complex.

A very exciting project, which we think will now extend throughout the country on a national level, has started in Windsor. It is the COPE program for providing life skills for ex-inmates after release from prison. We find most people come out of prison, not only lacking in skills or techniques in terms of what to do with their life, but lacking almost completely the attitudes necessary to work, when and where. Prison, in my estimation, is not only one of the greatest single contributing factors to crime in the country by its very nature, but destroys the small amount of incentive which most men have when they enter.

The COPE program has been successful and, indeed, we are now teaching the fourth group, of approximately 20. This began under a local initiatives program and has been extended to the end of September. I might just add that we have 64 persons involved in this throughout the country under local initiative programs, opportunity for youth and other types of programs which have been offered by the government. Many of the ex-inmates themselves have become part of the whole process of re-integration and assisting themselves to re-enter the community.

We have other ideas for new programs in the future. One of our thoughts is that experimentation is most essential in the whole field of correction. Just because we have done something in such-and-such a way for X number of years does not necessarily mean that it is kind of canonized for all times. We think that new projects are necessary, particularly those which involve intrinsically the released offender who has reintegrated himself and re-established himself in the community. I think, Mr. Chairman, that is all I would like to say.

Senator Hastings: On behalf of the committee, I would like to welcome you both this morning, and thank you for the contribution you have made in your brief and will make this morning with your evidence. Our witness yesterday, from the Ontario Association of Chiefs of Police made two rather serious allegations against parolees concerning the criminal activity of the parolee. If I accepted the evidence of the police chief, they are practically all-out engaged in criminal activity.

The Chairman: You mean the parolees, not the chief of police.

Senator Hastings: I wonder if I could take one house which you operate in, say, Windsor. How many men would be in that home at a given time?

Rev. Mr. Libby: That would vary from perhaps a low of about 12 to a high of 20.

Senator Hastings: So it would be an average of 15?

Rev. Mr. Libby: Yes.

Senator Hastings: How many of those would be parolees and how many would be dischargees?

Rev. Mr. Libby: Since I am not directly involved in the day-to-day work of the house—my work is on a national basis—I

really cannot answer that question. My guess would be that perhaps upwards of half would be either on national parole or provincial parole at any given time or, indeed, would be on some kind of temporary absence program.

The Chairman: When you say “provincial parole,” you are talking about probation?

Rev. Mr. Libby: No. The provincial parole service deals with those inmates who are serving indefinite sentences.

Senator Hastings: Would you have a figure of the number of men who would go through the house in a year?

Rev. Mr. Libby: Approximately 120. I think across Canada last year we had over 700.

The Chairman: That is in your association?

Rev. Mr. Libby: Yes.

Senator Hastings: Let us say from 300 to 350 parolees would go through your system in a year.

Rev. Mr. Libby: I am taking a guess.

Senator Hastings: How much criminal activity would you say those men engage in?

Rev. Mr. Libby: First of all, what do we mean by “criminal activity”? Do we mean those who are detected? If we are talking about parolees or dischargees, quite frankly I do not see much difference in the attitude. I do not think that because a man is placed on parole or because he lives in a half-way house, or because he has brown hair, means that we have any magic formula for him. It is quite easy to work with a man in prison; you just put bars in front of him. But once he is released, we do have a challenge, the whole community has a challenge. We are simply part of that system. Because a man lives in a half-way house does not suddenly make him something different. As far as a man charged with crime while living in a community residence is concerned, the forgone is very, very small. I would say less than 5 per cent of people, while living in half-way houses—and the average stay is somewhere between two or three months—would ever be charged with criminal activity. I could not subscribe to the view that parolees are out committing crimes every day. I have dealt myself, during my time as director of the house for over six years, with nearly 1,000 living-in people, plus an equal number that I have worked with as out-clients, who did not take up residence in the house, and I do not suppose they are necessarily going to tell me if they are involved in criminal activity; but I am sometimes more concerned with those who have no criminal record but who are involved in criminal activity. I think a statement like that by any person or body is rather silly.

Senator Hastings: I did not wish to segregate the men in half-way houses. I felt that from your experience in the half-way house business you would have a fairly accurate knowledge as to what activity—

Rev. Mr. Libby: Obviously, a parolee is under closer supervision than a dischargee, although all men coming out of prison who were sentenced, I believe, after August 1, 1970, are coming out either on parole or under mandatory supervision. I feel, and always have felt, that parole is a great help to a man. Of course, if he is on parole and living in St. Leonard's House he is under supervision and observation for 24 hours a day. Actually, if a man lives in his own home or in a rooming house and he reports to his parole officer every day — and I do not think that happens very often — you do not know what he is doing the other 23 hours, unless the police detect him. If he is living at St. Leonard's House and he goes out to work at 8 o'clock in the morning and we find out at five o'clock that he did not, in fact, go to work, we do not know what he has done between 8 and 5.

We do have a better surveillance method than would be possible under any other kind of supervision. I believe in supervision for the released prisoner. I believe, however, that supervision must be cautiously exercised because I think there are cases of too much supervision, and too much close supervision by a parole officer can also have a deterring effect on the man's rehabilitation, in that he might get sick of this and say, "I have had this every day of my prison career." I do not think that is the attitude of most parole officers.

Senator Hastings: That brings me to the second allegation that was made, that there was a lack of supervision on behalf of the Parole Service.

Rev. Mr. Libby: That is utter nonsense. I think the Parole Service gives very good supervision.

Senator Hastings: Would you recommend that every dischargee that comes out of our prisons should go through the process of getting back into society by way of half-way houses?

Rev. Mr. Libby: No, I would not. I think that some should and some should not. I cannot see the half-way house offering anything to a professional man or a married man who is going to reintegrate with a family in a positive manner. On the other hand, I would like to see half-way houses, community residential centres, hostels — and they are run by many different kinds of organizations, both public and private — used far more extensively for temporary absence programs, day parole programs, and so on.

Senator Hastings: That is the policy of the Penitentiary Service. They have opened about 10 of them this year throughout Canada.

Rev. Mr. Libby: Some people feel that if a man goes from one kind of prison to another, even if it is in the community, if it is under the same kind of supervision, you are not getting the same kind of thrust that you would get if he comes out of the government service and gets into a private agency. I think that temporary absence, day parole, or whatever you want to call it, combined with private half-way houses, offers a very nice transitional period. It is halfway in itself. It is halfway out of the close supervision of prison in the community, and yet the government service that is, the Parole Service still has very close contact with the man. That is what I would like to see as the ideal.

The Chairman: In other words, a situation where we put a man in a job in the community, and let him do it while in the half-way house for a period of time until you are satisfied that he has made the necessary adjustment?

Rev. Mr. Libby: Right. I do not think he should stay in the half-way house too long. That can only be an extension of the prison system. I think this should be a transitional period. He should go from prison. I would quite frankly like to see more people go from maximum to medium, to minimum; not all, but many to a private half-way house out into the community. That could be planned, and the planning on that should start literally the day he is sentenced.

Senator Hastings: Do you have any recommendations as to the number of people in a house?

Rev. Mr. Libby: Yes.

Senator Hastings: What is your average?

Rev. Mr. Libby: Our average is about 10. I feel very strongly that if you have too many fewer than 10 you will have too small a group to deal with; over 20 is negative. I hope the government has not established these privy centres, or what are now called community centres, with 30, 40 or 50 in them. You are just producing another prison. Whether it is in the middle of a city or 50 miles out, as most prisons unfortunately are, I do not think it will make too much difference. I think they should be small, and I would recommend an average of 10 per house.

Senator Hastings: I was disturbed to hear that two that are opening, in Vancouver and Edmonton, will have 50 members.

Rev. Mr. Libby: They are pure prisons.

Senator Hastings: They seem to lose the group loyalty and just become another institution. While I am glad to see 50 men get on minimum security, I think we are defeating the object.

Senator Burchill: Would your suggestion of setting up a board mean the elimination of the Parole Board?

Mr. Barnes: There would have to be a board with many of the same functions, but perhaps called something different, maybe calling it what it is, because the Parole Board in a subtracting kind of fashion is becoming a sentencing tribunal in any event. My own personal feeling is that if the legislation is made to conform to the practice, we may end up with a more logical process than we now have. It is working, but the legislation and the machinery are not designed for what is actually happening. That is what we feel.

The Chairman: This would apply to longer sentences, would it not?

Mr. Barnes: Only. It would be ridiculous to have summary conviction offences dealt with. That is why I stipulated indictable offences involving prison terms of two years or more, which of

course automatically means they are not served in a reform institution, but are served in a federal penitentiary.

Senator Burchill: How are these half-way houses financed?

Rev. Mr. Libby: That has been the major difficulty. Our association asked the Solicitor General, Mr. Goyer, about two years ago to appoint a task force to look at the whole phenomenon of community-based residential centres across the country. That task force was established in April with Mr. William Outerbridge as the chairman. It will report on June 30 with an interim report, and finally will report on September 30. They are doing a very thorough job, travelling across the country, with conferences and "think tanks". We have already had this in our region. I am hopeful that they will look at the whole area of how co-operation can be greatly extended between the public and private sectors, and how a more realistic basis of financing can be achieved.

In the Province of Ontario, under the Charitable Institutions Act, we receive \$7.20 per day per man, one-half of which is federal money. Under a new system, started April 1, 1971, the Department of the Solicitor General finances approved half-way houses in the amount of \$10 per day to those residents who have been referred by either the National Parole Service or the Penitentiary Service. That figure is reduced by the amount received from the province of \$7.20 a day, giving us \$2.80 a day. The old system of ad hoc grants, where someone obviously took a figure out of the air some place and gave this house that much and another house another amount, has not been really enhanced much by this figure of \$2.80, because if you add the \$2.80 and the \$3.60 you find the federal share still greatly outweighs the provincial share. In other words, no one yet has sat down and asked the serious question: how much does it cost to finance? What should be the federal and provincial share? How many federal and provincial ex-prisoners do you have in them? What can the community generate? Most of our financing has been private, with foundation support and so on. It is only now that we are really beginning to look at formulae, and I hope that when this presentation is made to the Solicitor General, particularly if we can influence the province and the federal government to talk with each other about it—which may be a great step forward in itself—we may then get some kind of sensible distribution. What we have asked for in our brief to the task force, and in our meetings with them, passed by our national body, is a split of 40 per cent federal, 40 per cent provincial money and 20 per cent private or community funds.

Mr. Barnes: Perhaps I might just add to what Father Libby has just said. What he states would be feasible and valid in the Province of Ontario. However, the problem is that we are unaware of any legislative machinery anywhere except in Ontario that will permit provincial grants comparable to those made under the Charitable Institutions Act. In the wide area, where you do not have in effect federal releasees, there just is not any provincial financing except in Ontario, except on an ad hoc basis, which is obviously undesirable, because planning just cannot be conducted under those circumstances. It is a complex problem in that respect, that the provinces must co-operate.

Senator McGrand: Early in your remarks you referred to the trial of prisoners, and I got the impression that you suggest that it

be divided into firstly determining the degree of guilt, and secondly the sentencing tribunal. Do you mean that these would be separate procedures, or would they be the one continuing procedure under different presiding officers?

Mr. Barnes: The second alternative. I think legally it would have to be the same continuing procedure but under different presiding officers, as you have stated.

The Chairman: In other words, the judge who found him guilty would not be the one passing sentence?

Mr. Barnes: Correct. If I may repeat, the reason for that is that those of us who are lawyers I am sure are realistic enough about our own capabilities to appreciate the social considerations that go into sentencing. We are not thinking in terms of jail terms any more. At least, a judge who finds his thinking immediately defeated by what happens to a man who is in prison. He is ordinarily released into the community, if he can be, as soon as he can be. As this process is going on it should be consistent. I think it is a bad image in the administration of justice if His Honour Judge X gives somebody 18 months in Guelph, and on an appeal by the Crown the Court of Appeal says it is insufficient for this heinous crime, that the man should have known better, that these defaulting lawyers had better be taught something, and changes the sentence to five years in the penitentiary. A few months later the man is working as a shoe salesman some place on day parole, or perhaps on parole. It is an inconsistency. It is an understandable inconsistency, because trial judges just are not up to date in what is happening in the social milieu of the correctional services. I really do not think it is their fault. It creates this inconsistency which anyone who knows anything about the administration of the criminal law knows is glaring and current. We do not criticize at all the fact that this is being done. The machinery is now outmoded and has not caught up with a social fact.

The Chairman: I believe that the State of California has a procedure whereby there are two things. First of all, there is a trial to decide whether or not people are guilty. Then, in front of the same judge and I think the same jury, they are asked to deal separately with the question of sentence afterwards. Are you aware of that procedure? Am I correct?

Mr. Barnes: Yes, senator, you are correct. I ask myself this: What does a jury know about the rationale behind sentencing? They are laymen with common sense, yes; but because of the fact that they do not deal with this problem all the time, they are going to apply schoolyard concepts to what they do: "This guy ought to be punished. This will be a deterrent to other people. We have to get back at him. Let us express our disapproval of him." That, we know is not really valid, but how can you expect a juror to react otherwise? This is why, in my personal view, a social agency—one could call it that—in a judicial atmosphere, subject to judicial review, but with the facts and the expertise at its command, should make these decisions and not put them on a judge who is not trained and who perhaps is angry at the accused because he has heard of his behaviour. It may be that the presentence report should come partly from the judge. These are just ideas that we think ought to be explored.

Senator Quart: May I ask Mr. Barnes if the society uses volunteers to supervise parolees; and, if so, to what extent?

Mr. Barnes: Yes, it does, to a limited extent. If I may, I am going to ask Father Libby to answer. He is far more familiar with the administration of these half-way houses than I am.

Rev. Mr. Libby: Honourable senators, we do not really supervise parolees in the traditional sense. That is, the parolee will be under supervision, when he lives in the half-way house, by the National Parole Service in that area or by some private agency. He uses the half-way house as a residential centre. We feel that our service differs from the traditional sort of out-client service which is probably entirely social work orientated. I speak as a trained social worker myself, with a master's degree. I do not believe that social work, any more than any of the other sciences, has all the answers.

Quite frankly, within the narrow concept of just sitting and working with a man with a social worker, you are going to have a little less than a perfect arrangement. We need not only a mixture of expertise but we need the volunteers. By "volunteers," I mean the so-called "square" volunteers from the community. I use the word "so-called" because I am never convinced that all "square" people are necessarily as "square" as they pretend to be. I think we also need those ex-prisoners who have demonstrated pretty clearly that they have re-integrated themselves in the community.

When we think about volunteers—and we made this fairly clear in our submission to the task force on community based residential centres we have to be clear on how we use ex-prisoners as volunteers.

For instance, I have seen half-way houses—thank goodness not in our community half-way houses—who will pay a "square" person for working in a house but will expect an ex-prisoner to volunteer his time. He resents that. That is just furthering the kind of negative attitude that society has instilled in him, sometimes accidentally, I admit.

We feel there are two kinds of function in a half-way house. One is the administrative on-going function where we feel you should have paid staff members, both ex-prisoners and others; and then the volunteer part of our program. We have hundreds and thousands of volunteers across the country in our work—employers, employers committees. We use them in working with our total cope program, and in life skills. We use numbers of volunteers there. We have volunteers in the recreational field. We have volunteers in the relationship of ex-prisoners with the community. We have volunteers in terms of sporting events. In many areas we use volunteers. I think there is a function to be served for the so-called professional—he may not always be an M.S.W.—there is nothing godlike in an M.S.W., by the way—or he may be just an ordinary man or a "square John" in the community, a man who works on the assembly line in the Chrysler Centre and who gets involved with people and has the guy over for him to talk and has sympathy for him.

Senator Fergusson: I want to ask a question based on your brief. On page 5 you refer to parole under the Parole Act and temporary absence under the Penitentiaries Act and the Prisons and Reformatories Act, and you said that all of these should be integrated under one service. Who would be responsible for it? How do you see it working out?

Mr. Barnes: It would be in line with the suggestions that we have been making. Perhaps some of the background against which that recommendation is made is that a man can apply for parole and the Parole Board may for very good reasons turn down the parole. Then the postman will bring that to the man's residence and his wife gets the letter saying the parole has been turned down—and an hour later the man is returned home on a temporary absence given by the Penitentiary Service.

Senator Fergusson: I understand that, but you say they should be integrated. Who should operate this? Should the Penitentiaries or the Parole Board be responsible, or both, for both absences?

Mr. Barnes: Really, it is the Parole Board—if you are going to continue to call that body the Parole Board. Perhaps it should be re-organized and its functions expanded.

Senator Fergusson: So you think that they should have responsibility for any absence?

Mr. Barnes: Ultimate responsibility, yes.

Senator Fergusson: That is what I wanted to know.

The Chairman: To simplify it, at any time that anyone is to be released by an institution, it should be the same organization which makes the decision?

Mr. Barnes: Precisely.

Senator Fergusson: That is what I had in mind. Which organization do you think it should be? Do you think it should be the Penitentiaries that should have all that responsibility, or should it be the Parole Board?

Mr. Barnes: We feel it should be the Parole Board. You will see in the submission that there is a recommendation for the expansion and re-organization of the Parole Board so that you would have a central parole board here in Ottawa with a policy-making and an appellate function, and regional parole boards to carry out the administration and decision making.

Senator Fergusson: And there should be no absences granted except those that are granted by that parole board, re-organized or otherwise?

Mr. Barnes: That is our view.

Senator Fergusson: I notice you say something about a man who can apply for parole. I am very interested to note the St. Leonard's houses are increasing so rapidly. They are giving a wonderful service. But what about women? Have you any for women?

Mr. Barnes: Yes, definitely. In Windsor we have the Inn of Windsor, which is for women. It is based on the St. Leonard's principle applicable to women, and it also is a completely integrated St. Leonard's facility. The problem with respect to women is obviously less in degree and different in character.

Senator Fergusson: Yes, I realize that. There are fewer women who are eligible for your services.

The St. Leonard's Society also has within it younger offenders' groups. This, with its new beginnings in Windsor, has been an outstanding success and probably will be repeated next year. We are growing rather fast and have growing pains.

Senator Quart: Following your remarks to Senator Fergusson regarding women in other areas than the Inn in Windsor are they allowed to enter these other half-way houses, or are they strictly for men?

Mr. Barnes: They are not co-educational, senator.

Senator Quart: They are not bilingual.

Rev. Mr. Libby: The senator brings up a very important aspect and, indeed, in most jurisdictions today that very thing is happening. In my opinion, establishing male or female only ex-prisoner half-way houses is rather like extending an outdated and outmoded concept of imprisonment. The concept you bring up should be explored. We have discussed it at great length at our monthly directors' meetings and intend to demonstrate at some time an integrated half-way house for men and women. Why not? Houses next door to many of ours have men and women in them and I think we are perpetuating unconsciously, or maybe consciously, a rather sick attitude on the part of our society.

Senator Quart: There would be good opportunity for a match-making business for marriages there.

The Chairman: They might be good ones.

Senator Thompson: Father Libby, could you enlarge on your opening statement? You mentioned three aspects which were of interest to me. One was with respect to your COPE program, the fact that you say that coming from the penitentiary a man really has learned no skill to adapt into the community. Therefore, you have to provide this service. Could I put it this way: Do you think that the penitentiary is an institution which could provide these skills so that you would not have to do so, or is it impossible in the penitentiary environment?

Rev. Mr. Libby: We have an international committee, of which John Braithwaite, the Deputy Commissioner of Penitentiaries, is a member, together with others throughout the country, in connection with St. Clair College in Windsor. As a matter of fact, we have a meeting next Wednesday which will be our first meeting, lasting all day, to discuss such matters. We will include the question of the possibility of bringing the COPE program into the institutions. This has already been demonstrated in the St. Clair College in Windsor. Of course, the community college in Kingston has also done a great deal in this area. Other community colleges are extremely interested.

However, I consider the concept of "prison" as such, to be detached, unrealistic, abnormal environment. I do not see how we could possibly teach men in there how to work, since they do not have to work very hard and they do not receive any real reward for

it. That is why most of us work on the outside. I am not so sure that I would work if I did not receive any reward for it.

The other problem involves the so-called occupations provided at present, such as manufacturing licence plates and mailbags. Not only do we not make licence plates on the outside, we are going to suspend making them anyway in Ontario with the new system. These programs are an attempt to reduce prison costs. Every time I see a report from the Solicitor General or the Penitentiary Service regarding cost to inmates, it has either increased or decreased \$500, but it seems to hover around \$11,500. This, I presume, does not include the costs of welfare to families, insurance costs for plant associated with crime.

I would like to see a study. I heard one person venture the thought that probably the cost of crime is over \$30,000 per inmate per year. It would not surprise me. That does not seem to be an aspect considered by either society or the Penitentiary Service. I think it is an aspect worthy of attention.

Are there alternative methods? Other countries have tried them, I suppose with varying degrees of success. In my opinion, there are better and more reasonable methods. As long as a man is in the community he can be taught more than skills. Many of our men attend the community colleges. Indeed, some are in the University of Windsor and other universities. They were really encouraged, but even before arriving at that point they must learn attitudes towards work which were probably destroyed inside the institution, where they did not have to produce.

I often say that a prison, in a way, is a reward system for those bad boys in society: "Do not work too hard; do not work at all, if you do not really wish to. We will give you fairly luxurious surroundings, unrealistic as anything, but fairly luxurious." Those are aspects which the St. Leonard's Society is combatting and with regard to which it attempts to promote dialogue with the total society. We must face up to it and decide that prisons do not work, they never have and they never will. We do not know what will work, but we would like you to join in an adventure of faith to try different methods and to research, if social science can be researched, but to try to analyze these problems. In the long haul we might make a few changes in the system.

Senator Thompson: In your opening remarks you referred to the family grouping, or the man and wife. Then you observed that the St. Leonard's Society had a number of other exciting projects. Could you tell us about some of the suggestions you have regarding these exciting approaches which you might take? I think it would be very helpful to us if we could learn from the experience of the Father and the St. Leonard's Society. Could you take an afternoon to list for us how you would like to see the whole set-up arranged?

Rev. Mr. Libby: Some of these ideas are still in the thinking and talking stage. Our directors of houses and volunteers see most of the released prisoners in connection with work. We have attempted to obtain additional funds. Funding is always a problem which holds us back. They believe in an out-reaching program in the community to reach those who are not now being reached. In connection with any agency, probation, parole or any other government or private agency, such as St. Leonard's, we are still referring to those who voluntarily, to some degree, make use of the service.

I notice that most offenders in the community make use of nothing. That is why they are offenders. I am still naive enough to think that there is a process that can be employed to reach out and tackle these guys and these gals, to challenge them where they are, on the street, to get them interested in themselves. That is really what they lack. They should not be brought into an office, nor even a house. They should not be identified with St. Leonard's House, the parole or probation service or any other after-care agency. They should be met where they are, in the hotels or poolrooms. Not enough of this has been done. Many people talk about it, but sometimes I think they do not have the guts to do it. We have the guts, if we can only find the money. I think we can use both prisoners and non-prisoners in these projects, mix them up and assess the result. I do not think they should be going out and saying "Hey, I work for the St. Leonard's Society." That would destroy the whole thing. They should be anonymous people, "padrés of the public" kind of thing. I happen to have looked at that program and I think a great deal was achieved. I think this is the next step.

Then I think there is the whole concept. We have discussed this with the Penitentiary Service, and in fact we are going to begin immediately to practise it. We call ourselves a half-way house, but half-way is not all the way. We think there is another step. We talk about maximum, medium, and minimum, a government sponsored community centre or a private centre. If you talk about the three-quarter way, I suppose the full way is when the guy is on his own completely.

There is one more step that it seems to me would be very exciting. That is to take a private family in the community and work with them, and they would take a guy and work with him. Now, that is fraught with all sorts of dangers and temptations, I agree. I would be willing to do it. I have been thinking about it for a long time.

The Chairman: Even old age pensioners.

Rev. Mr. Libby: Yes, even old age pensioners have been asked to do it, but I am not at all convinced on that program, I must admit. I think that is fraught with all sorts of unnecessary dangers. But I think we have middle-aged people, like me, in the community who would be only too happy to do this. I am not so sure that we would need \$10 a day to do it. That 10 bucks is my 10 bucks and yours that is going in to make that up. I think there are many other things that could be done. So, they go to a ball game with them. They eat with them, they go to the lake, they share in their family life.

"Ex-prisoners"? Regarding my kids, from the time they were babies—two of them have been born since we opened St. Leonard's House—I think we have had more babysitters who were ex-convicts and more friends who were ex-prisoners. At one time, when my son was about five, he had taken a pen and drawn all sorts of figures up his arm and said, "That's like the guys at St. Leonard's." Tattooed. They have a positive influence on them.

My family understand something about the whole program for offenders and have a view on it. I just think that we could form a three-quarter concept, if I could use that term, and have private families—not old age pensioners but private, middle-class, working families—take in a guy. They had better take out an insurance policy

to boot, because they may lose a few things in the process. That is part of it. But I think it could be done from very small beginnings, and I think it could be extended. Those are some of the things. As you can see, I am very strong on this self-help idea.

Senator Lapointe: Would this project be only for those who are not married, because perhaps the married ones would prefer the new family to their own family.

Rev. Mr. Libby: Our experience, in terms of marriage, is that most ex-prisoners have never been married. The ones who have been married are not very successful at it. The number of men who come out of prison with a welcoming wife and home is very small.

Senator Lapointe: What is the proportion?

Rev. Mr. Libby: I really could not give you the statistics. From my own experience of St. Leonard's at Windsor, I would say roughly 25 per cent of the people who came to us had been married and one-fifth of that figure would some day be welcomed back by their wives.

The Chairman: In other words, one-twentieth of the people who come out.

Senator Lapointe: What is the climate inside these half-way houses? Are they friendly towards each other? Are there brawls and quarrels?

Rev. Mr. Libby: There is, I suppose, everything that happens in the world—because we are in the world, we are not out of it; we are right in the middle of it. The house, we say, has a personality. That personality changes. You have to determine the personality of a house when you are admitting a guy. That is very important.

Senator McGrand: You said you would not go as far as to put prisoners in the homes of old age pensioners. I have been thinking that it would be a very fine thing, because if you have prisoners who have proved to be good babysitters, a lot of those same people would do the same thing in the homes of old people and help them do the little things they cannot do for themselves. I knew of a little rural county jail where the jailer was about 80 years of age, and the prisoners not only looked after the jail, but they also looked after the jailer. I was there a good many times.

Senator Lapointe: In listening to you, one would think that you were in favour of abolishing the prisons and the Criminal Code.

Rev. Mr. Libby: Oh, no. I do not think that in any place we have suggested abolishing prisons. The recently published Maximum Security Report is excellent. I could subscribe to it right through. But basically, the new prisons that have been built are useless, anyway. We need a kind of maximum security prison in the country, but open to the community.

There is no magic in anything, including prisons. If you put a man in prison for five years or 50 years, you do not get magic imposed on him. We are simply saying that you have to look at the

whole system. The system has never been looked at. It is a hodge-podge. It was built up that way, and when it is corrected it is corrected in a hodge-podge manner. Parts of the system, we feel, operate against each other. If the whole thing could some day be looked at, right from the time of arrest, which may be the key moment, right to the time that a man is living in the community, we might find quite different possibilities on which to operate.

Senator Hastings: Father Libby, I was interested in the operation of your half-way house, and I have been following with interest the establishment of a community correction centre in Calgary. I do not know whether it is because the government are doing it, but there are about 15 men there, with a staff of a director, four counsellors and a clerk. It seems to me these six men are going to be counselling each other, or trying to find someone to counsel. It seems to be very over-staffed.

Rev. Mr. Libby: I would not necessarily call that staff ratio over-staffed. I would question the function. The idea of having counsellors all over the place is, we find, really not necessary, if people are being counselled while they are on parole. There are many interesting agencies in the community to provide "counselling services". The first person I would demand to see in one of our houses is an employment director, who would work with the employers in the community.

You need supervision, particularly at night. We have a person on 24 hours a day, seven days a week, in our house. That is most essential. Someone asked me if anything ever happened. Of course it does. Sometimes acts of violence break out. These are usually things that have been brought from the prison itself, old long-standing animosities. Some guy has a few drinks, he decides this is the time to demonstrate. You need a competent staff member right there at that moment to catch that. In 999 cases out of 1,000 it can be settled in a minute.

When I was a director I used to get called down, infrequently, at 3 o'clock in the morning. Since this was well advertized, by the time I got there it was all settled; I would have a coffee, and very often, interestingly enough, we had better group counselling sessions at four in the morning than we ever had at four in the afternoon. You could never call them at four in the afternoon. At four in the morning they were spontaneous; they were in response to an emotional situation, when people wanted to talk about what was really bothering them, which, quite frankly, was sometimes me: "You are too authoritarian. You are this, that. You are a jailer. You are the Parole Board. You are everything we don't like." We would talk about that. That provides an excellent opportunity. It is this sort of crisis counselling, the here and now approach, that we feel is so essential. Not very much happens in an exciting way between the hours of 6 a.m. and 9 p.m. It is from 9 p.m. to 6 a.m. that you need your competent staff, people there to handle emergency situations. I dare say that if you did a study of all the parolees in Canada, not too many get into too much trouble during the day time hours, but the night is a terrible drudge.

Senator Laird: Is that due to drinking?

Rev. Mr. Libby: Largely.

Senator Lapointe: Are liquor and drugs strictly forbidden in your house?

Rev. Mr. Libby: Oh yes. That does not mean you do not on occasion find a bottle, usually empty. When I was a director I had house meetings. Sometimes I did not act like a typical clergyman at those meetings; I would get a little annoyed and show my annoyance, and tell them quite frankly that I was speaking on behalf of society, that there are certain demands made of people. On the other hand, I must admit I always felt just a bit phoney in doing it. If a parolee lived any place else in society, if he lived in a house where drinking was allowed, even though he personally may have had a stipulation on his parole that he was not to drink, that did not assure, unless the parole supervisor was there, that he did not.

Luckily, in Windsor—and we have been under four administrations of the parole service; we started under Toronto, then London, Hamilton and Windsor—we have always had excellent parole people. I do not know if they are that way all across the country. Most of our houses report that they are. I think a lot depends on the quality of the Parole Service people. If you get a guy in the Parole Service who is just rule-oriented, he will have trouble with everybody. In Windsor I have seen the parole officer come out at three in the morning, which is pretty good; he came right to the house and handled it right there. If you get a guy like that working for the government service you have got an A.1. person.

Senator Lapointe: Why are you against the boarders working inside the house? I know of a half-way house in New York where everyone has some little task to do every week.

Rev. Mr. Libby: Ours do. For many years they did all the cleaning. If I were to assess the quality of the cleaning I would say it was not always at the level I might like. Luckily, under local initiatives we have had quite a bit of help in that area with supervision, and for employing the ex-prisoners. It is a great idea and we tried it. In a way, the ex-prisoner always feels a bit cheated if he is living in a house and you say to him, "Look, buddy, we want you to do this and that, but we are not going to pay you for it," and then he sees some "square" staff member getting paid for this job.

I brought this out before, but I feel very strongly about it. Even though a man has a prison record, you have to treat him with the same equality as the staff members. It is a tough job, but usually, to be honest, they are not the kind of people who are going to volunteer. The odd one will, but then the staff say, "What does he want? He is cleaning up all the time. Either he is some kind of compulsive neurotic, or he is trying to con us for something." I am afraid that no matter what he does, he is judged.

Senator Lapointe: I am sure that women in half-way houses have to do some work.

Rev. Mr. Libby: I must admit that the two or three women's half-way houses in Canada that I have seen are much cleaner; they are much more organized than the male half-way houses. Perhaps women are just cleaner by nature.

The Chairman: Maybe they are compulsive housekeepers.

Senator McGrand: What contact do you have with the community? Do any of their "square" neighbours ever drop in to see them?

Rev. Mr. Libby: Yes. When we started we did not think they were ever coming. I do not think any project ever started out with the hostility that we encountered with St. Leonard's House, Windsor. On our tenth anniversary, looking back at what the neighbours really said at our opening, I found they thought they were all going to be raped and murdered, that their property values were going to depreciate. None of that happened. One thing did come out. I remember when we were before city council on one occasion, a council member said, "You will never have a dope fiend in there, will you? That is what the neighbours were worried about. Afterwards I asked him what a dope fiend was, and he replied, "Well, you know, a guy who smokes that stuff." That is ten years ago. The worst thing you could have in a half-way house, ten or eleven years ago, was the man who smoked marijuana. Now we have houses all across the country for drug users, and that is not an issue any more.

Many of the things that came up with us are not issues now. Indeed, our guys have cut lawns. One winter we shovelled every driveway and sidewalk on the block. We won a lot of friends that winter. Several were older people who were afraid at first, but they changed their minds. Then they started to bring us in pies and cakes. Sometimes we had more desserts than we could handle. We did not have lot of food in those days. They were very good to us and I have no complaints. We had *Weekend Magazine* do a story. The writer said, "Would you mind, since I have read the history, if I went to the neighbours?" I said, "Not at all." He went to three and then he said, "There's no use in going to any more, they think you are one of the best neighbours they have got; at least your place is supervised. They mentioned a couple of other houses on the block that they think need some supervision."

Senator Laird: Could I ask this question, following on Senator Lapointe? On the matter of employment, the evidence so far is certainly indicating that one of the big problems for a parolee is obtaining employment. What does the St. Leonard's Society do about helping a man get a job, of any kind or description, on the outside?

Rev. Mr. Libby: There are two kinds of activity. We feel that every guy in the house must be involved in one or the other. He must be either in employment or in school. We are getting more and more people who want to go into vocational and academic upgrading courses. We encourage these and try to make special arrangements for some of them, so that they can stay in bed longer and perhaps pay a bit less than an employed man for room and board, if the income is very small or is none at all.

On the employment sector, I have said publicly over and over again that I have never found a problem in this. It depends on the economic situation in the community. If there are lots of jobs, there are lots for us. For instance, I might single out the Chrysler Corporation, which hires ex-prisoners without question. They have

told me they cannot see any difference in the work. It is true that such men might leave the job more frequently than would occur with an established man, but basically there is not any real difference. They are good workers.

One of the problems I have had over the years is shown in a remark that comes back: "Why do these guys work so hard in the job? They wear themselves out." That is part of this kind of enthusiasm for something new. You find three weeks later they may quit the job. This is where the COPE program comes in. It shows how to get a job, how to keep it, how to get up in the morning, how to turn up at work; you cannot be ten minutes late, you cannot go drinking half the night and hope to keep the job. Then there is a question as to how to proceed to the job. I am beginning to think that the COPE program should be instituted in every prison in Canada—although that is not the ideal place for it.

Senator Thompson: Would you enlarge on the COPE program—what essentially do you do?

Rev. Mr. Libby: It is a six weeks' course. It is involved under the LIP grant, the Local Improvements Program. It is a separate organization from St. Leonard's completely. It involves approximately 20 people, many of whom are experts and some of whom are not. In the life skills approach they are trained through seminars, discussions, having people in lecturing. They are trained on what is expected by employers. They go out on dummy runs; they go to an employer who has a setup. The man fills out a job form, and when that is done one asks the employer if he would employ this man, how he did in the interview, what he did that was good and what he did that was bad. Then the man is taken out to a practical job which may mean fixing up an old person's home, or it may be washing the walls of a social agency. They are supervised by one of the supervisors and they are assessed on the kind of job they do. That is discussed with them individually and then corporately. There is that kind of thing, plus grooming habits, special things, drinking, sex, the whole gamut of life is discussed.

Senator McGrand: You would not permit drinking, the use of liquor, in these homes?

Rev. Mr. Libby: That is correct.

Senator McGrand: What do you say about the use of marijuana?

Rev. Mr. Libby: I would not permit it either. It is against the law, to begin with.

Senator McGrand: That is right, so it is against the law, but if in the future marijuana were permitted?

Rev. Mr. Libby: I would not be surprised if at some time in the future there were some kind of quasi or semi-legalization. I guess that if we follow the Le Dain Report we are in an area of suspension, anyway, because it says you can possess it for your own use. I find that confusing. I do not know where you get it. We are going to arrest and convict and penalize people who sell it, but if you happen to own or possess some for your own use, then that is okay.

Senator Laird: You could grow it?

The Chairman: With all respect, this is not the Le Dain Commission, so let us get back to the point.

Senator Quart: I can quite understand that you have not a bar set up in a half-way house but, on the other hand, supposing a man went out and had a drink, perhaps a couple of them, like anyone else, and came back in, do you think that should be all right?

Rev. Mr. Libby: There is no problem. But if he started causing trouble because of this, I think we should discuss this with him. I have never been too excited about this "no drinking" procedure. I think it creates more problems than it solves. However, let my answer to it be that it is there, and as long as it is there I feel the compulsion that it should be administered. Therefore, if a guy has no drinking problem, he does not have to worry about it, but if a guy is otherwise we have to deal with it. If he has not a drinking problem, it is my view that there should be perfectly straight relations; we have two hotels at the end of the street and that is where he should be, in the midst of it. You cannot take him away out, because if you had a half-way house 20 miles from the city he might as well be in another prison. We want these houses right in the city, right close to affairs, because it is in this way that he has to learn to cope.

The Chairman: To cope with all the problems.

Rev. Mr. Libby: Yes, including the lights at night.

Senator Thompson: We had a number of Indian inmates. Have you had experience of that, and in your house do you have Canadians of Indian background?

Rev. Mr. Libby: We have had, in the past.

Senator Thompson: Can you give us any suggestions with respect to that? Do you see a particular need for help to these people in integrating into society?

Rev. Mr. Libby: We certainly do. We have probably had more trouble per capital with our Indian inmates than with any other group. I always think this is because they are singled out, they feel very insecure, they are an extreme minority group. Some people have suggested separation — and I believe that already there are half-way houses or community residential centres for Indians. Somehow, that is against my grain, too. If the house can be established with about a 50-50 split, one might be close to it, or closer to it. It is very difficult to imagine it. If I were in a house where I was the only non-Indian, I might feel rather insecure.

Senator Thompson: And it could be the other way around also.

The Chairman: That is the point.

Rev. Mr. Libby: Yes, it would be the same the other way around. If you had a house with half and half, you might have a better chance. We have had suggestions.

Senator Laird: You might speak with Senator Williams about it.

The Chairman: Maybe Senator Williams has a question to ask. Do you?

Senator Williams: Mr. Chairman, I was biding my time to see if the witness would run out of subject matter before I asked questions concerning Indian paroles. His remarks are very interesting to me. I have visited only two prisons in my lifetime and those on very recent occasions. You have mentioned that you have more trouble in your experience with half-way houses with Indian inmates. What do you mean by "more trouble"?

Rev. Mr. Libby: In the cases of which I am thinking they were the only Indians in the house at the time. The rest were all white. The trouble was very clear cut. It was a very aggressive, hostile approach on their part towards the staff and the other guests of the house. I felt it was the type of feeling that I would experience probably equally if I were in a house where the others were all Indians. They felt they were singled out. We have had, by the way, the same problem with blacks when they have been the only one in the house. On occasion we have had three or four black inmates, in which case it was different and did not create such a problem; they had some association. I do not think we can take a member of a minority group and put him in with a majority. This will only perpetuate all the hostility that he has in him. My thinking would be more to tend to equalize that group. Therefore I disagree with the concept of a half-way house for Indian ex-inmates. In my opinion, it should be a 50-50 split; then I could be very enthusiastic about it.

The Chairman: Or split it so that no one feels obviously in a minority within the house.

Rev. Mr. Libby: That is right. We only perpetuate the feelings a person has felt all his life in our society. There are all kinds of ramifications, and we could go into this at great length. It is rather unfortunate to single out a racial group and say we will have a special accommodation for that group. I think they should be integrated, but integrated so that they do not feel segregated.

Senator Williams: The contact in your province is well over 400 years. Why should there be in that province a state of hostility between the Indian and non-Indian people? What is the matter with this society?

Now, how would you attain a 50-50 split of inmates in a house?

Rev. Mr. Libby: That is a very good question. However, the areas in which we were approached in this respect were in London and Brantford. I feel there might be a possibility in those areas of attaining, maybe not a 50-50 but certainly a 75-25 split, which I think would go towards solving the problem. I have in mind those who have been in our house. I think if there had been other Indian ex-inmates with them at the time the problem would not have emerged.

In one particular case we had a great deal of difficulty, and the man admitted to us that he felt threatened and insecure as the only member of his minority there. I refer specifically to Windsor. We do

not have many Indian people in that area, so he did not even have social contacts in the community.

Senator Williams: This may be true, that Windsor has a limited number of Indians, but the province has over 60,000.

Rev. Mr. Libby: Yes, indeed.

Senator Williams: So the penal institutions they go to must, somewhere along the line, involve ending up in a half-way house in Windsor. Would you consider the inmates to whom you have referred as far below standard, or to the point that they are illiterate?

Rev. Mr. Libby: Not at all. These inmates were not illiterate. As a matter of fact, they were quite the opposite. They could take their place in society and had every ability within themselves to work and become part of society. However, it is similar to the black person and any other minority group. When they have a criminal record against them, that is one thing. Then they are a minority group, and a very small one in a city such as Windsor. They have everything going against them and nothing positive that I can see. We devoted much thought and discussion to this and in fact have spoken with most of these chaps since they have returned to prison as to how they felt about it. Partly on the basis of that discussion, they said one Indian ex-inmate should not be mixed with a group of guys like that because it will never work. That was their own kind of thinking.

Senator Williams: I am inclined to disagree with that. I think he is quite capable, in many instances, of taking his place in society. The attitude may be a result of some of the experiences he has had in this society and in prison.

I am very much concerned about one of the prisons I visited, because the authorities discriminated against the 25 per cent of the number of inmates who are Indians. I have looked into this thoroughly, but maybe not enough. I am certain that there is something definitely wrong with those in charge of that prison.

You mentioned that one solution might be to have a 50-50 split between inmates in half-way houses. That may work, but I am very doubtful. I have not visited a half-way house. Maybe I have not had the time to pay sufficient attention to those who end up in prisons. However, some of my people have knowledge of how sad some half-way houses are for Indians in the Province of British Columbia. It appears that an educational program to make these problems known to the inmates and those on the outside is necessary. Those in charge of half-way houses must have a meeting point to familiarize themselves with the possible attitude of prisoners, particularly when they are on parole.

I have one further question. It concerns your knowledge of repeaters among the Indian parolees that you have known. What would be the percentage, roughly? I think you mentioned 120 was the turnover of the houses. Possibly less than 10 per cent would be Indians. Of that 10 per cent, what figure would be repeaters?

Rev. Mr. Libby: Much less than 10 per cent.

Senator Williams: I meant that 10 per cent of your 120 may be Indians.

Rev. Mr. Libby: I doubt if we would have that many. I doubt if we would have over 2 or 3 per cent, if that. Of the group I have worked with, they have repeated. That is only one very small group. I do not say that would extend to all the Indian inmate population across the country. My experience in this field is very limited. I do not feel that I am any kind of authority to make any specific observations about that.

Senator Williams: What would be the percentage of Indian prisoners in your province? Because from Manitoba out to the far west it is very, very high; maybe upwards of 50 per cent are Indian people.

Rev. Mr. Libby: I visited the correctional institutions in Ontario a number of times. The place where I would see most Indians would be Brantford, at the Birch Industrial Farm. I would see some at Burwash. But when I was in the federal and provincial institutions in Saskatchewan, I was absolutely amazed at the Indian population. I have never seen anything like that in Ontario. It always seemed to me to be a very small group. That could, of course, have been at the time I was there. It seemed to be an extremely small group; it was hardly noticeable. As far as the Kingston complex goes, I cannot remember observing anything different there. Certainly, when I went to Saskatchewan—I remember those institutions particularly in Prince Albert, the provincial ones, particularly for the women, and also for the men, and the federal penitentiary—it must have been at least 50 per cent. I have never observed that in Ontario. As you say, we do have a very large inmate population. I do not know what that means exactly.

Senator Williams: It means one thing to me: that possibly one-half of them in the western penal institutions have no business being there for the length of sentence they carry. So what is wrong?

The Chairman: With respect, senator, I think the questions you are asking are valid, but I do not think they can properly be directed to the gentlemen here, who are dealing with a particular function of the parole system, which is the supervision of people who have been released.

Senator Williams: That is very true, Mr. Chairman, but there would be no parolees without prisoners.

Senator Lapointe: I would like to know if paroles are granted to Indians as easily as to white people.

The Chairman: I do not think that is a proper question to ask of these gentlemen, but if Father Libby wishes to answer it, he may.

Rev. Mr. Libby: I would not have any knowledge of that whatsoever.

The Chairman: We will get Mr. Street back and ask him that question at a later date.

Senator Hastings: Staying for a moment with this native problem, I had the pleasure of attending a native workshop with Senator Williams, but I do not claim to be an expert. You said that these cases have presented you with a problem. You indicated an aggressive, hostile approach. My first question is: Does that statement not indicate that the man's problem is greater, and therefore he needs greater assistance?

Rev. Mr. Libby: Oh, I think it does.

Senator Hastings: Do we go to the extent of giving the added assistance only to him? Are we confining our assistance to the standard of the white majority?

Rev. Mr. Libby: I would think the latter is true. You are talking about the same problem that exists with the blacks that you have in a state like Michigan. When you go into the Jackson Prison—with Detroit there is a 50 per cent split between black and white; the state less than that—and you see 70, 80 per cent black, you ask questions. I think we are in a white society and the rules that apply are white rules. It is most unfortunate. I am just saying this generally, that we do not focus on minority groups. It is most unfortunate.

Senator Hastings: I will not go as far as my colleague and say "discrimination", but there is that subtle discrimination that exists in the penal system, in the parole system and in the after care. We are setting it to the white standard, and we are not prepared to go the extra mile for these people.

Rev. Mr. Libby: I would say, senator, that subtle prejudice exists in our whole society.

Senator Hastings: That is right.

Senator Burchill: To revert to Senator Hastings' question about staff at the Calgary institution, what is the extent of your staff in Windsor? What does it consist of?

Rev. Mr. Libby: Windsor was our first house, and is now a member of the United Community Services. It is the only house that we have that is completely financed. In other words, the deficit is picked up by the Windsor Community Services. Therefore we have a fairly large staff in that particular house. Excluding all the local initiatives program people who are dealing with recreation, hobby craft and maintenance, I think the staff is about 10. That is to deal with, say a resident average of between 15 and 20. It is also to deal with — and this is something which must be taken into consideration — our ex-guests. A guy leaves the house. He may get off parole, or he may never have been on parole, and he may come back to that house every day for a while and consume a staff member's time for half a day just talking. He may come back to shoot pool. He may later on decrease his contacts with the house.

I was in there yesterday, for instance—this is just a typical day; my office is not at the house—and there were two people from the Elizabeth Fry Society who were visiting from Kingston; there were a couple of other people visiting; there were three ex-guests there; there were about two guests of the house, because the others were

out working or at school; there were staff members—and there was not room in the office for all those people.

What do you do? Do you kick them out and say, "You are an ex-guest. We will see the Elizabeth Fry people. You come back some other time." You cannot do that. They go out and shoot pool, and they wait until one of the staff members is available. This happens constantly. It is hard to get anything done there, because you have this constant flow of people coming and going. It is a focal spot in the community.

I think that when we are talking about projects, one thing that we also need—we have done a lot of thinking and talking about it; in fact, we made a very late application under the local initiatives for it, too late—is for some kind of centre in the community — I am not sure it would have to be reserved just for ex-prisoners; I think the whole community needs it — that would operate roughly during the hours that other agencies are closed, from 5 p.m. to 8 a.m., for some kind of basic recreation and listening service. "Tell" programs, where you phone in and tell somebody your problem, is not the kind of thing that I am talking about. That is the kind of thing that is needed in every major community across the country. Very few communities have them, although a few are now sponsoring them.

In the last week I have had two calls at three in the morning from people who wanted to talk. I am not too receptive at three in the morning, and I am afraid I do not talk too long. If I could say, "Please go down to this address"—and not just call a number—"There is somebody there who will listen." By the way, we at St. Leonard's House in Windsor have a staff member available all night. A guy fought with his wife and said, "I thought there would be somebody here who could listen to me".

Senator Burchill: Is every ex-prisoner allowed admission?

Rev. Mr. Libby: No.

Senator Burchill: Do you have room for them all? What happens?

Rev. Mr. Libby: First, we would not have room for them all; secondly, we cannot handle all types; and thirdly, one of the real problems, at least in our house, is keeping it filled at the proper time. You may have 30 today, and three weeks from today may have only 10. You have to dovetail in with the releasing procedure, whether it is straight release, parole, or any other method. We do not decide when a man is coming out of prison at all; either the courts or the Parole Board decide that. Therefore, it is a most difficult task.

Referring back to what I said before, we have a house personality and if the average age in the house today happens to be 28 and an 18-year old comes in, it probably indicates we have some older men in the house, and it may not be the best place for him today; six months from today the average age in the house may be 21 and he may just be a perfect person to be in there. You have to look at him as well. We have an admissions committee.

Senator Thompson: I should like to return to a broad question. In your brief you make certain suggestions about the present parole

system. Have you other approaches by which you feel it should be modified?

Rev. Mr. Libby: The parole system?

Senator Thompson: Yes.

Rev. Mr. Libby: After all, I must admit our thoughts in the brief are fairly broad thoughts, without working out the details. I think our thoughts on the parole system are contained in the brief. What I believe the brief is saying is that we are 100 per cent for parole; we just think that now that parole is accepted, is established, and has been in operation for roughly 13 years, it is probably time, like anything else, for it to be looked at. Our house is only eight years of age. There were at that time only about six or seven houses. We heard of a half-way house starting in Moncton, one in St. Johns; one that had started in another city had just closed because somebody beat somebody else up; one started in another city closed because the bank manager told them to. We thought it was time to look at the whole thing, and that is why we requested the Solicitor General to appoint a task force, to look at this whole phenomenon.

Somebody has referred to it as an emotional brush fire sweeping the country. Some people do not like that kind of definition. However, there is some truth in it. The task force was telling me that they sent out 350 inquiries to residential centres of which they knew, which did not include the sort of drug, alcoholic and Salvation Army centres. They thought there might be as many as 500 different residential centres in Canada that had amongst their clients ex-prisoners; they may not be exclusively for ex-prisoners. If you have anything like that, you have a phenomenon, run by all sorts of different organizations, run in all sorts of ways, some self-help, some community centered, some government sponsored.

I just thought it was time we look at the whole thing. That was why I personally welcomed this Senate committee, and why we submitted a brief. We also felt that it was probably time to look at the whole issue of parole, every aspect of it. I know the parole system has changed considerably over the years. One of the things I hate to see happen—and I often get the feeling that it might be happening, although I cannot prove it—is some national issue on parole. As I told Mr. Street once, an editorial in the *Windsor Star* some years ago suggested that Mr. Street and members of the Parole Board should be put behind prison walls for some decision they had made. What utter stupidity. I hate to see the Parole Board pulled back in any way if there is a national issue. That is the time they should accelerate, because that proves the value of parole; it proves how badly it is needed. No group of men and women will ever make perfect decisions. The strength of the Parole Board to me is in their failure rate, not in their success rate.

Senator Thompson: Are there any areas in which you feel we need to have greater support of community agency work, either government or voluntary?

Rev. Mr. Libby: I think we have about reached the point where we have lots of government services available and lots of private services. I am not saying there should not be some new areas, and I have mentioned several today that we would like to explore. I think

the time has not only come but is long overdue when we need a dovetailing of our public and private services, which I presume starts with closer communication and co-operation. This was another reason why we asked for the study on half-way houses.

One of the things we stressed at our conference and “think tank” was that there should be an overall plan. The private sector, you see, does not have release control, and quite frankly does not have the budget that the public sector has. I can see an ideal correctional system operating in which the government provides the funds, the clients and the supervision, and the private sector provides the sort of practical communication with the community, the job placement, the housing, and the volunteers that are necessary. I see a marriage almost.

Senator Thompson: You talk about getting public support for parole, which I think is really implied when you refer to an issue coming up. Could you elaborate on the suggestion of establishing panels of speakers and forums, as well as other means of communication with the public? In what way does the society contribute to interpreting parole to the public? Do you see more means as well as yours? What would they be?

Rev. Mr. Libby: Do you mean how does the St. Leonard's Society of Canada communicate with the public about parole?

Senator Thompson: Yes, interpret it.

Rev. Mr. Libby: I do a lot of speaking right across the country. One of the things that perhaps we have not put in the brief—I just cannot recall—is that we would like to see the National Parole Board and service and the Penitentiary Service spend a little more time and money in speaking and interpreting the work. I realize that members of the Parole Board who are probably the most capable of doing this are very tied up, particularly since they are in travelling panels, which is ideal, since they actually see the prisoners. I am wondering if it could be that the Parole Board should be expanded. We have made a suggestion on regional expansion, or there should be some other method, or we should find some other method, so as to do some travelling and so on.

The Chairman: Public relations?

Rev. Mr. Libby: I do not like the expression “public relations”. I would rather see the expression “public education”. In public relations it seems we are trying to con the public into believing that we are good. In public education we are trying to admit our failures and our successes. There is no better way to sell to people than to admit your failures, because then you do not seem to provide a panacea. For instance, we have just—and this is as much my fault as that of anyone else's—made an arrangement to meet with the board in September of this year. I had met with the board earlier, when they were small and when we were small and it was simpler to do it. Now that they are travelling and are very seldom in Ottawa, it is more difficult. I realize that if they give us an hour or two of time, that is a great sacrifice. I wish there could be more communication between us and the board itself and the whole service. I do not know how that can be worked out. There are all sorts of difficulties.

I must say I have never found the board or service hesitant to work it out. It is just that it is one of those practical problems. I think this could lead us into all sorts of new and exciting adventures. We want to be an assist to the government service; we do not want to be part of it; we do not want to be swallowed up by it. We want to remain private. We think we have something to offer. It is not perfect, but we would like to make it better and we would like to co-operate and we would like to be the kind of agency that could assist the Parole Board in expanding its own services across the country.

Senator Thompson: When you are making speeches, have you had the opportunity to have statistics on your successes and failures?

Rev. Mr. Libby: You raise an interesting point. When we first started, I think we were so anxious to prove our successes that if a guy stayed out of prison for six months we said he was a success. Then we became a little more realistic. When is a man a success? Is he a success in one year or five years? Is he a success the day he gets off parole? Is he a success on the day he leaves the house? What is success? If he was in an armed robbery three times and he comes out and receives the assistance of either the National Parole Service or ourselves, or both, and he goes back a year later for a minor breaking and entry, is that some form of success? I really think it might be; it might be the beginning of his phasing out of criminal activities. I do not know how you assess success.

I tend not to want to talk about it in definitive terms, because I do not see any other agency that can. I do not see how the prison system can. The prison system always reminds me that they take all comers; they have no choice. The National Parole Board and ourselves both make choices. The prison system does not make any; there is always room for one more to enter its walls. It would be unfair to mix those two.

I would like to see a major research project undertaken across the country involving the whole criminal process. I have a suspicion that the key person might often be the arresting police officer. I base that on the fact that the police have referred people to me who have turned out after release from prison, without parole or anything, and have called their last arresting officer, the only "square John" they knew in the community that they could trust. That seems to say something. That happens often enough. That may be the key man that we have missed completely.

Senator Thompson: When you say "no choice" in describing the prison and the person who comes in, that they had no choice, do you think that that parole should be as of right?

Rev. Mr. Libby: This is difficult to say. I suppose it is hard to define parole, since we now have mandatory parole, which releases everyone at two-thirds of the sentence. I could not see any difference between that and having mandatory parole which releases people at one-half of the sentence. You pick out a magic number and that becomes it, but I am not sure that that is the answer. Some people should be paroled earlier; some people should be paroled almost immediately, at the beginning of the sentence; some people should be paroled half way through and others should be paroled closer to the end. The concept of mandatory parole is pretty

attractive, in that everybody comes out on parole. But just to make it mandatory at the end of the sentence is most unattractive. This might result in our having a higher number of recidivists because of the numbers who would come out on mandatory parole. They always look towards the end, and now they do not get it any more.

We have made a decision that everyone is going to be put on parole. That decision was made to start on August 1, I think. I am not sure of the correct date. We have decided that everyone in prison, independent of what they are there for, will come under that. Having made that decision, it seems to me that the function of the National Parole Board is no longer, "Will we parole Joe Snow?" but, "when?" That takes the patience of Job and the wisdom of Solomon to decide. One has to decide the exact day on which he should get out. That seems to me to be the major function of the board at this point—not *whether* they will parole, but *when*. Perhaps that is the most important function. If anyone in the world can decide the magic date for this inmate, I am sure he could become a millionaire in selling his theory. That is a tough job.

Senator Lapointe: What is your opinion about the nomination of the members of the Parole Board? Should there be a change in the system of choice?

Rev. Mr. Libby: That presents difficulties too. It is something like appointing judges. I see that, a few months ago, the leader of the New Democratic Party, if I remember exactly, got some national headlines by saying that judges were political appointments. Everybody denied it and said that cannot be true.

If a judge, or indeed a member of the National Parole Board, is going to be appointed by the party in power at that time—which could be any one of several parties—I suppose there is going to be a natural tendency to look with favour on certain people and there may be a split between them. They may say they will give a couple of party hacks a try and give a couple of people who are not party hacks a try, in order to show that they are being objective. That seems to me to be a fair way that the political machine might work.

I have always felt that both judges and National Parole Board members and any other appointments could best be made by an all-party committee, composed not by the number of seats in the house but by an equal number from all parties, so that you do have objectivity. In other words, you are going to have two or three parties and two parties, any way, agreeing on the appointment. It may be that you are going to appoint the same people, but it appears to be a little less politically orientated. I do not know how National Parole Board members are appointed, and I do not know how judges are appointed.

Senator Thompson: Do you feel that perhaps your association and some other organizations should submit names to the National Parole Board appointment outfit, and that that might express the liberal function of the National Parole Board?

Rev. Mr. Libby: Once again, I think it would be very nice. We mentioned this when we were called to Ottawa, and a number of us were involved in half-way houses. We met with a committee of the government. We suggested that a committee be established, composed of public and private people who would set up a panel to

make decisions on which half-way houses be recognized. To date, I do not think that has happened. It tends to be the government people who will make the decisions. It would be most advantageous to have private people. I realize you get into a schmozzle here on what agencies are nationally going to be represented. Are you going to include provincial agencies? Are you going to include regional agencies? There has to be some criteria. It may be that there would be large committees, and large committees do not get much done. Some move in that direction would seem desirable. The more you remove appointments from the political arena, the more palatable they are going to be to the public.

Senator Thompson: On the point of national and provincial, do you feel it would be more helpful to have just national parole boards? Do you see some confusion?

Rev. Mr. Libby: I certainly do. I think that all paroling across the country should be done by the National Parole Board.

Senator Quart: That would eliminate the provincial group?

Rev. Mr. Libby: That is correct. I see no reason why not.

Senator Quart: The Parole Board has not been set up such a long number of years. I am not an expert in this but up to our inquiry, which has brought out the pros and cons, I think they have had a very enviable record. On the other hand, appointments change too quickly. Do you not think continuity should be a consideration? They have the experience.

Rev. Mr. Libby: One of the problems your committee might consider in connection with the National Parole Board is that no one has ever criticized the prison system for receiving "Joe Blow." He was sentenced to go there. However, every decision made by the National Parole Board to release a man can be criticized by someone. There are certain newspapers, which I am sure Mr. Street knows only too well.

The Chairman: We know them also.

Rev. Mr. Libby: They seem to take particular delight in attacking the National Parole Board, and particularly its chairman. That type of attitude is not only short-sighted; it is ridiculous. We are dealing with a very important aspect of our whole society. In releasing prisoners the National Parole Board cannot make proper decisions for all. Therefore, it must make its decision and stand by it. I am pleased to see that more and more inmates are informed as to why they are not released.

Senator Lapointe: It is not only newspapers who are not happy with the situation. I have here a clipping saying that the Chief Justice of the Superior Court of Quebec states that parole is too easily granted. He is very tough on that.

Rev. Mr. Libby: I not only disagree with that, which I do vehemently, but those who are paroled will be coming out anyway. It is not as though men are released who somehow mysteriously would otherwise spend the whole of their life in prison. There may

be the odd case, but over 99 per cent of men and women released on parole would have been released from prison in time. The decision is not, "Shall we release them?" It is not now even, "Shall we put them on parole?" but purely and simply, "When?"

Mr. Barnes: Senator Quart, I examined the legislation consisting of the Parole Act, the Prisons and Reformatories Act and, in Ontario, the Correctional Institutions Act, in an endeavour to find out the jurisdictions of the two parole boards. There appears to me to be overlapping, certainly in dealing with the same man in some aspects of his sentence. There is also a hiatus. Perhaps some of my professional colleagues who are senators might ask themselves what provision there is to parole a man in, for instance, the Ontario Reformatory in Guelph who has three consecutive six-month sentences and in addition a four-month sentence for summary conviction, that is under a provincial statute, where I believe there is no provision to parole him at all. He probably gets parole anyway. My understanding is that the National Parole Board and the Ontario Board of Parole have very nicely dovetailed their activities so that there is no duplication.

Considering the legislative provisions as a lawyer, I wonder just what right they have to do that? I have not studied the matter, but in my opinion there is anomalous legislation which, administratively, has not been tailored to what actually occurs. The two boards simply worked out the problem in the best manner they could. I do not really see what useful purpose is served by provincial parole boards.

Senator Quart: I agree with that, but I happen to know many staff members of the Parole Board. I wish there was a timeclock in the Parole Board, where they would punch in the time of arrival and departure.

The Chairman: Senator, with all respect, you are asking one organization to pass judgment on another, which I do not think they ought to be asked to do.

Senator Quart: I realize that, but I do say that they spend a tremendous number of hours over and above those worked by most government agencies.

Rev. Mr. Libby: On a thankless job.

The Chairman: We will accept that.

Senator Quart: Will you accept it?

The Chairman: Yes.

Senator Quart: If not, I will resign and, remember, you do not have a quorum.

Senator Thompson: You mentioned that a parole officer might not see a man once a day, and I realize that the amount and type of supervision varies with areas and those handling it. Could you give us a broad definition of parole supervision, as your society sees it?

Rev. Mr. Libby: Do you mean the actual supervision aspect?

Senator Thompson: Yes?

Rev. Mr. Libby: I do not think we would see it much different than it is being administered as far as actual supervision is concerned. I have never known a parolee who lived in our house or in the community who had any trouble seeing his parole officer. Usually he thought maybe he should not see him quite as often and thought they were keeping too close a tab on him. As far as the social case work supervision process, if I might use that definition, is concerned, I do not think there is anything lacking in it at all. I just think there are things lacking in the total picture. We can provide some, but not all.

Senator Hastings: You have answered the question regarding the present concept of mandatory supervision being impractical. Was your group ever consulted as to the implementation of the present concept?

Rev. Mr. Libby: No.

Senator Hastings: Are you opposed to or in favour of the definite sentences of one-third before parole and 10 years for life sentences in the case of certain offences?

Rev. Mr. Libby: I am not quite sure that I have the question.

Senator Hastings: The Parole Board cannot consider paroling a murderer for 10 years, or anyone before one-third of the sentence is served.

Rev. Mr. Libby: I disagree with that.

The Chairman: At this point I thank Mr. Barnes and Father Libby very much for their excellent brief and frank and helpful explanation to us this morning.

The committee adjourned.

APPENDIX

St. Leonard's Society of Canada
1787 Walker Road
Windsor 20, Ontario

Brief to the Standing Committee on Legal and Constitutional
Affairs of the Senate of Canada

EXAMINATION OF THE PAROLE SYSTEM IN CANADA

I General Principles and Definitions

Parole is an early release from prison under supervision in the community. It should not constitute a change in the sentencing procedure but only the location where the sentence will be served in part.

Parole, it seems, should be based on the theory that a person needs this kind of supervision in the community and it would appear that those inmates who are more dangerous and difficult to deal with inside the institution should be given parole. It is unreasonable to release this type of inmate for a short period under mandatory parole as he or she is the very person who needs a long period in the community under strict supervision.

Parole should be granted only after a complete investigation in the community in order to determine the best area for a person to serve his parole and also contact should be made with all agencies who have had anything to do with him in the past for their recommendations. In other words, parole should not simply be a quasi-legal institution but should take into account all the social sources and social contacts which a person has had in the past. This should include police, probation, correctional institutions, after-care agencies, churches, schools, community organizations, neighborhood contacts, etc.

II Legislation

Changes have been made in the various Acts including the Parole Act, the Prisons and Reformatories Act, the Federal Court Act, the Penitentiaries Act, the Criminal Code and the Criminal Records Act over the last few years. Since we now have the Law Reform Commission of Canada set-up and receiving submissions on these various Acts, it would seem preferable that a thorough study be done and continued in order to bring these Acts up-to-date at fairly frequent intervals. They should not be allowed to remain in their present form as if they were codified for all times. It would seem preferable to have them continuously up-dated in light of social conditions and the thinking of the general public. This would require hearings, preferably at various locations throughout the country, in order that all segments of society could give their views on changes in these Acts. All changes in this brief indicate certain amendments to the Parole Act, the Penitentiaries Act and the Prisons and Reformatories Act.

III Division of Responsibility in Parole Matters

It would seem preferable that one Parole Board exist for the whole country, although the nature of this Parole Board could be quite different than it is now constituted. Provincial Parole Boards

should be eliminated and the one National Board should serve two distinct functions: one, as a court of review for paroles denied or given; and two, as a policy making body to establish the principles on which parole would be granted or denied and the general procedures to be followed in all jurisdictions throughout the country. Local Boards would be responsible for the granting or denying of paroles.

We in the St. Leonard's Society of Canada feel that Corporal Punishment should be eliminated entirely and that those matters which are not directly involved with the paroling of prisoners from institutions should be in the hands of some other body. This would involve the prohibitions in driving and the Criminal Records Act. These matters would be handled under some other section of the Solicitor General's Department and would allow the Parole Board and Service to concentrate entirely on matters affecting the release of prisoners from Federal and Provincial Institutions across Canada.

IV Composition of the National Parole Board

The matter of the composition of the National Parole Board seems an extremely difficult question. At the moment, since members are appointed by the Solicitor General for Canada, it would appear that there could be political influence brought to bear on these appointments. This should be, if at all possible, avoided. Perhaps a committee composed of those in government service and those in private after-care agencies as well as the community at large could make recommendations to the Solicitor General in order of preference and an appointment could be made on this basis. This would then remove it from the political arena.

Parole Boards should be regionalized, perhaps by Provinces and could further be subdivided by regions or areas. Each National Parole District would have a local Board in its own area and such Regional Parole Boards could have a very wide segment of the community represented on them including government employees, private after-care people, police, representation from the Chamber of Commerce, representation from the Trades and Labour Council and from the community at large. This would give a very wide segment of the community representation and would involve the total community in the decision making process. It would also be most helpful if suspensions and revocations were being considered.

V National Parole Service

It would seem preferable if the Canadian Penitentiary Service and the National Parole Service were an integrated body and all releases from institutions were done through one channel. This would include ordinary paroles, mandatory paroles, temporary absences and any other programs which might be instituted in the future. It would allow for a more integrated system and would reduce the confusion that does exist when two or more separate organizations are releasing people from institutions. Under the present system a certain amount of damage and harm is done to inmates and their families when two or more bodies are attempting to make decisions on the same people.

VI Parole Applications—Parole Eligibility

If the National Parole Board constituted an appeal body, it would seem that legal and other representation should be allowed to this body on behalf of a parolee, or other persons in the community concerned with the parolee, although legal and other representation need not apply in the original application for parole before the Regional Board set up for that purpose. In other words, legal and other representation would be allowed only when an appeal was to be made before the National Parole Board against the original judgement made by the Regional Parole Board. Parole eligibility requirements in the Parole Act should be made clear to the inmate at the beginning of his sentence.

VII Parole "Hearings" and Decisions

Parole hearings should take place within the first two months of a sentence. When parole is refused, reason should be given to the inmate and definite criteria established in order to qualify for parole some time in the future. A new parole date hearing should be set-up at that time in order that the inmate will know exactly where he or she stands and what they must do in order to become eligible for parole say six months or one year from that date.

VIII Day Parole under the Parole Act and Temporary Absence under the Penitentiary Act or the Prisons and Reformatories Act

As has been mentioned previously in this submission, all of these programs should be integrated and run under one service. With the giving of exact criteria as mentioned in section VII (above) the necessary requirements for parole would be established early in a sentence. The criteria for granting of parole or the granting of temporary absences are difficult to set down but if the community is represented and an appeal is allowed to the National Parole Board, the necessity for general criteria is greatly reduced.

IX Mandatory Supervision

Mandatory supervision seems like an excellent idea although it would be hoped that this would be used in a minority of cases. It would be preferable for the vast majority of inmates to be released at an early date during the serving of their sentence in order that they can receive the help and support necessary to re-establish themselves in the community. It would seem that the present paroling system is not releasing those who need it the most and sometimes is releasing inmates at too late a date in their sentence. It is necessary to have parole earlier in the sentence, say as soon as possible after one-third of the sentence has been served and parole should take place sometime between one-third and the time when one-half of the legal sentence has been served in an institution.

X Parole and Special Categories of Offenders

One of the functions of the National Parole Board, under a revised system, would be to draft policy statements on special categories of offenders and make these available to all inmates and to the general public. This would allow for a much wider understanding of special groups of offenders and their needs.

Many special groups of offenders who do not have any facilities available in the community for help might best be served by special treatment centres set up either as Half-Way Houses or specialized centres in order to help them with their problems and perhaps in some cases to assist them for the rest of their life. This might apply particularly to the older offenders who would not be able to cope with a modern competitive society, which has changed a great deal since the time they were incarcerated. The general guidelines for policy changes should be the recommendations as set out in the Ouimet Committee Report.

XI Staffing of Parole Services and use of Private Agencies

The role of the voluntary after-care agencies in the parole system should play a much more important part than it does at present. There should be more communication and co-operation between public and private sectors and when decisions are being reached in either sector, they should be reached in joint consultation. All too often, independent decisions will lead to a further fragmentation of the correctional service in Canada which has already been fragmented far too much in its history.

As for the quality of services purchased from the private agencies, this should be worked out in consultation as well. There is nothing to indicate that the service given by a public agency is of superior quality to a private agency service at the present time and therefore both groups have a great deal to contribute to each other. This can only be done through continuous consultation. Professional services in the public sector should be made available to assist private agencies in the carrying-out of their work.

XII Probation Following Imprisonment

Any form of probation following imprisonment seems a rather redundant method of approaching the whole matter of the treatment of the offender. It would be preferable to use parole. Probation should only be used for those persons who do not need imprisonment.

XIII Community Response to Parole

The Federal Corrections System should do more in the educational area in providing speakers and forums as well as other means of communication to the public at large. Private agencies have more access to the community and very few people in our society have a clear understanding of the prison system, probation or parole. This whole area could be served by an integrated approach between the public and private sectors in corrections. Until such communication takes place the growth of volunteer programs in corrections will be hindered.

XIV Evaluating the Parole System

Evaluation is probably one of the most difficult areas to produce in any system. It is something like setting up criteria for the release of prisoners from penal institutions and almost becomes an individual effort in each case.

This does not preclude the necessity for research but research should not be done on a person simply while he is serving his legal sentence imposed by the court. He should be followed for some years after this time in order to assess the rehabilitation value of the whole correctional system. Any research which simply looks at a person while he is serving his legal sentence does not provide the information which is essential in deciding which correctional programs are effective.

If proper research is instituted, once again on a shared basis between the public and private sectors, this can be interpreted to the public in many ways. Information on such research should be available to all Canadians in order that they can better understand the effects of the whole system of corrections which includes the public and private sector and which does not end until the person is fully integrated in the community and has re-established himself or herself as a responsible citizen.

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 11

WEDNESDAY, JUNE 21, 1972 ★

Eleventh Proceedings on the examination of the parole system
in Canada

(Witness and Appendix—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

Chairman: The Honourable J. Harper Prowse

The Honourable Senators:

Argue	Lang
Buckwold	Langlois
Burchill	Lapointe
Choquette	Macdonald
Croll	*Martin
Eudes	McGrand
Everett	McIlraith
Fergusson	Prowse
*Flynn	Quart
Fournier (<i>de Lanaudière</i>)	Sullivan
Goldenberg	Thompson
Gouin	Walker
Haig	White
Hastings	Williams
Hayden	Yuzyk
Laird	

**Ex Officio Members:*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the
Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Wednesday, June 21, 1972.

(19)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators: Prowse (*Chairman*), Eudes, Fergusson, Haig, Hastings, Laird, Lapointe, McGrand, Quart, Williams and Yuzyk—(11).

In attendance: Mr. Réal Jubinville, Executive Director (Examination of the parole system in Canada); Mr. Patrick Doherty, Special Research Assistant.

The Committee continued its examination of the parole system in Canada.

Mr. Guy Marcil, President of the Montreal Policemen's Brotherhood Inc., was heard by the Committee.

On direction of the Chairman of the Committee the Brief presented to the Committee by the Montreal Policemen's Brotherhood Inc. is included in this day's proceedings. It is printed as an Appendix.

At 12.00 noon the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, June 21, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Mr. Guy Marcil, President of The Montreal Policemen's Brotherhood Incorporated, and he tells me that he would prefer to speak to us in French. However, since we have simultaneous interpretation facilities, we can follow the ordinary procedure.

Mr. Marcil, the members of the committee have read your brief, and what we would like first of all, if it is agreeable to you, is a brief resumé of what you consider to be the important points you feel you would like to draw to the attention of the committee, and then the meeting will be thrown open for questioning.

[*Translation*]

Mr. Guy Marcil, President of the Montreal Policeman's Brotherhood Incorporated: First of all, I want to thank the Chairman and the members of the Committee for their invitation to appear before the Senate Committee. May I add that I represent the Montreal Policeman's Brotherhood Incorporated which is an association comprising 5,200 policemen whose duties are to ensure order in the Montreal Urban Community. I am the President of this Brotherhood, and as such, I will try to explain the policemen's point of view, on the one hand, as policemen, and on the other hand, as members of a union. In my opinion, this is the essential point. I will also try to explain our position with regard to the public, that is, our responsibilities as policemen towards the public.

My other duties are as follows: I am also Director of the Canadian Police Association; Vice-President of the International Conference of Police Associations, and President of the Quebec Policemen's Federation.

Parole is discussed regularly at several of the meetings of the various organizations I have just mentioned.

I do not have the documentation that a chief of police or a director of police could have. I just have facts as they are told to me, my past experience with parole, and I am making these representations on the basis of my connection with policemen and President of the Brotherhood.

If the brief is not to be read in its entirety, I would like to stress the major points of our experiences and of our representations.

I would like to point out that among the suggestions we make, the first one deals with the immediate establishment of an inmate

selection process which will permit to identify the most serious cases and, especially, the authors of crimes of violence and the recidivists.

Secondly, that parole not be granted to the authors of crimes of violence before half of the sentence is served, if it is a first offence for a criminal act of this kind.

Thirdly, if it is a repetition of a crime of violence, the inmate should not be permitted to be paroled.

In the fourth place, that a thorough record be made on the character and personality of parole applicants, above all with respect to cases involving serious criminal acts and recidivism.

Fifthly, that part of this record be prepared by the policemen involved, or at least with their participation.

Sixthly, that the necessary amount of money be allocated by the government for the establishment and maintenance of specialized services within the police corps, for the preparation and drafting of policemen's reports, the collection of pertinent information from all policemen concerned and the presentation of all information to the Parole Board or its representatives.

Seventhly, that in all cases involving crimes of violence and recidivism, the said Board or its representatives hear the policemen responsible for the investigation and records connected with criminal acts committed by these individuals.

Eighthly, that in these cases, the Board take the necessary steps to have a policeman attend the meetings of the committees responsible for the study of records of this category of applicants.

Ninthly, that during the parole, the supervision of the person having committed a serious criminal act be intensified and improved.

Tenthly, that a more specific role be given to police services used in the supervision of these individuals.

Eleventhly, that a closer co-operation be established between the parole system and the leave system created under the Penitentiaries Act.

Twelfthly, that a special service be created in order to ensure the inmate on parole work as soon as he is granted parole.

I would also like to add that, in our mind, our representation agrees with the principle of parole, but, I think, there is certainly room for improvement, above all when dealing with individuals who have committed crimes of violence. I think this fairly well summarizes our brief and the position of the Montreal Policemen's Brotherhood.

[English]

The Chairman: Honourable senators, you have heard the presentation. We are now ready to proceed with questioning. Would you like to start, Senator Hastings?

Senator Hastings: Thank you, Mr. Chairman, and thank you, Mr. Marcil and the Brotherhood, for your presentation. It seems to me you are arguing for much less parole being granted, to the point where I am wondering if you are not arguing for no parole at all.

My first question deals with what you are advocating regarding more police involvement in the parole process. Do you not believe, sir, that, in light of a policeman's involvement with an offender at the time a crime is committed, this would impair his ability, or preclude him from making an objective judgment with respect to what might have transpired regarding this individual during his "treatment and training program"?

Mr. Marcil: Senator, if I gather correctly you are referring to a police officer being present when the Board sits on appeal. Do you mean this would prejudice—

Senator Hastings: He would be prejudiced in making an objective judgment at that time.

Mr. Marcil: Again, if I say "Absolutely no", I think you could probably question my answer. However, a police officer in our society today has to live with a new approach to the whole scheme. I think if a police officer would be permitted to assist in the parole process he would act in an objective way. I think he could deduce very easily if he was misleading or trying to prejudice the person on appeal. I think you have to give the police officer this sway. I do not think this would be a negative approach. I do not say some of them will not be objective. They will always be objective.

Senator Hastings: In your province at the time an offence is committed your police department completes a rather lengthy report to the parole Board. The Parole Board seeks the advice of the Attorney General on all offences over four years. At the time a parole is under consideration, and in preparation of the reports, a very extensive investigation is carried out to which a policeman contributes a great deal. Do you not believe that is sufficient police involvement in the process?

[Translation]

Mr. Marcil: I want to thank you, Mr. Chairman for permitting me to answer in French. You have the privilege of simultaneous translation.

We have actually, within the Montreal Police Department about three policemen who deal with parole and I will tell you frankly that this is not sufficient. It is unfortunate that large funds are not available to give many more policemen a chance to receive a better training. The point that you raised is that we have not sufficient policemen for this work and this is our problem. Should we have more policemen to deal with the decisions connected with parole, I think this would be an improvement. I will not dare to say that this

would solve the problem, but this would be part of the solution. At the present time, there are three policemen, on Montreal island, who deal with parole and God knows how many cases of parole we have to deal with.

Senator Lapointe: How many precisely?

Mr. Marcil: I do not have the exact figures. As President of the Brotherhood, I do not have the parole files or the statistical data of the department of Montreal police. I have some files in connection with the special cases brought to my attention; but, when you ask how many cases, I could not tell you right now.

Senator Lapointe: Would you say there are many thousands or many hundreds?

Mr. Marcil: Many hundreds, honorable Senator, and maybe around 400 to 500.

[English]

Senator Hastings: On page 2 of your brief you recommend that police representation be assured on the committee responsible for making the decisions. Would you also allow an offender the right to cross-examination of police evidence?

Mr. Marcil: Certainement.

Senator Hastings: Those are my questions, Mr. Chairman.

Senator Laird: I would rather ask my questions in English, if that is all right, Mr. Chairman.

The Chairman: It is quite all right.

Now Senator Laird is speaking in French.

Senator Laird: You have mentioned that you assist in obtaining employment for parolees. Exactly what does your organization do?

[Translation]

Mr. Marcil: As I said earlier, senator, the Montreal Policemen's Brotherhood has nothing to do with the police service as such. It is a representative organization which deals with the welfare of its members, collective agreements and pension funds. Unfortunately, within the framework of the Brotherhood, I do not have the means and there is no structure which would permit the establishment of a service that could help parolees find employment.

However, our recommendation is as follows: the objective of the parole system is to rehabilitate prisoners and to return them to society—and I do understand the problem these individuals are faced with—but when these individuals are rejected by society, it is very difficult for them not to return to crime. I think, however, that the government agencies should specialize and create a service which should show employers a new approach in their dealings with parolees. If it is just a matter of taking someone out of jail and throwing him into the streets without any further steps being taken,

the individual is not being rendered a service and neither is society. I think everyone agrees on that.

Senator Lapointe: Do you think that if a parolee is set free in big cities like Montreal or Toronto, that this is more risky than if he were returned to freedom in his own village or his own community?

Mr. Marcil: I think, Senator, that we should certainly make a distinction.

I think that the individual who has opted for a criminal life will go where crime will best fulfill his needs. And it is in a big city like Montreal or Toronto that that individual will continue will follows his chosen criminal pattern.

Now, should he return to his village or community, I certainly think that there would be fewer occasions prompting him to continue his criminal life. I would not say the same thing if he were a sexual offender, because nothing would stop him from repeating sexual crimes whether in Montreal or elsewhere.

Senator Lapointe: But are we not faced with a vicious circle, because they want to find both employment and anonymity, and this they can find in a big city where hardly anyone would recognize them. That is why parolees want to go to a big city, simply because, first of all, better job opportunities are to be found there and, secondly, because they will not be recognized and will remain unknown in the crowd. What is your opinion on that?

Mr. Marcil: I think that you are perfectly right, senator. However, I still believe that some sort of body should be set up to make employers or people who have contacts with industries fully aware of the problems involved and make them realize that a parolee has a right to return into society.

Once again, I want to repeat that I find the practice of having someone for the theft of an animal, as was the habit at the end of the past century, a monstrous thing to do because an animal was worth very much to people. Today, the pendulum has swung in the opposite direction especially in connection with crimes committed with violence. As stated at the outset of our brief, we are not against the principle of parole. We are not against granting parole to individuals condemned for a first offence, and we quite agree that they should not be detained with the inmates.

At the present time, in our province and in the City of Montreal, there is a serious climate of violence, and I think it is our duty to protect society, simply because if society has done everything for the rehabilitation of criminals but to no avail, it is our first duty, as policemen, as it is the government's duty, to protect society. This is the main point of our brief with respect to crimes committed with violence. I could mention to you four or five cases which I had to deal with about 15 days ago. One parolee had said: Do not let me free. Yet he obtained his freedom and committed murder.

I could go on with other examples I have on hand.

Senator Lapointe: What do you consider a crime with violence? Would you kindly list those points?

Mr. Marcil: Well, there is robbery, murder, rape when I use the word "violence", I do not mean merely giving someone blows. I am

referring to a man who is found guilty, in front of his equals for having committed a crime of violence. This is the category of people I am dealing with.

Senator Lapointe: Do you mean with a revolver?

Mr. Marcil: Not necessarily with a revolver; it may be with a revolver, or a knife, or a hammer, or it may be by hitting a person with a revolver butt. What is also regrettable, is that some people will be traumatized for the rest of their life. A law was passed recently in Quebec to have a compensation paid to the victims. Once again, I think it is far from meeting the needs of our society. What I deplore, is that our society has done whatever it could, but there are still some people who are victims; people who, having reached a certain age, are working in order to leave an inheritance to their families and they may lose everything from one day to the next, because they are the victims of violence, they are traumatized and end up in hospital as invalid. This is what we complained about in the report we submitted to you—the acts of violence against policemen—but, do not forget that we do not agree with any other form of violence, in particular, violence against society. What we disagree with in the parole system is the lack of sound judgement in selecting the parolee.

It does seem as if all opportunities for regaining freedom as quickly as possible are put at the disposal of people guilty of committing a crime with violence. At least, this is the impression the parole system gives us.

[English]

Senator Quart: Mr. Marcil, did I understand correctly that what you said about the parolee not wanting to be paroled, was it the parolee who said that, or have you checked with the National Parole Board in that respect? The parolee could say, "Well, I did not want to be paroled," but is that a fact?

Mr. Marcil: Without naming any of the people mentioned in this letter, I could refer you to it.

The Chairman: Could you use that document? We could call him "Mr. X," and then this document can be made quietly available to the members of the committee. The record will merely show him as "Mr. X".

Is that agreeable, honourable senators?

Hon. Senators: Agreed.

The Chairman: Let us deal with specific cases. It would be much more useful to use if we used specific cases rather than have a discussion in which we are simply crossing each other up.

Senator Hastings: Will we be dealing with the particular case that you have referred to where the individual said, "Don't set me free"?

Mr. Marcil: Yes.

The Chairman: Let us deal with that one first, then.

[Translation]

Mr. Marcil: On February 4th, 1972, Mr. "A", S.P.M.—70—326, was arrested by the police and accused of burglary at the Montreal Court of Sessions (clerk's file No. 995-72). The robbery had been committed at 20360 Lakeshore Rd. and the amount of money taken was \$2,000. On May 4th, 1972, Mr. "A" appeared in Court and pleaded guilty. He was defended by a lawyer from the Legal Aid Services. Following his lawyer's representations and the testimony of a Probation Officer at 1, Notre-Dame East, the sentence was postponed until July 4th, at 2.30 p.m. In spite of the very heavy charges which were made against the man, he was set free by the Judge, provided he would obey the following conditions:

[English]

Senator Hastings: He is not on parole.

The Chairman: Perhaps you could clear this up, Senator Hastings. You know what we are talking about here.

Senator Hastings: You are speaking of a case, Mr. Marcil, where the man was released on probation. He was not released on parole by the Parole Board.

Mr. Marcil: But before that he had been released by the Parole Board.

The Chairman: In other words, he committed this crime while he was out on parole?

Mr. Marcil: Yes. He had told the Parole Board quite often not to set him free. He said he had never asked the Parole Board to be set free. He said, "They have set me free; I am a sick man"; and a murder was committed afterwards.

Senator Hastings: I find it difficult to accept that, sir. A man has to apply for parole and appear before the Parole Board before parole is granted.

The Chairman: If he says he does not want to be paroled, then he will not be paroled.

Mr. Marcil: Well, that is his statement.

The Chairman: Do you want to check your notes? We are probably having some difficulty in working with the two languages. I want to be perfectly clear on what it is you are telling us. You are saying, as I understand it, that this man committed a very serious offence—

[Translation]

Senator Lapointe: Do you mean that he has committed a robbery while he was on parole?

Mr. Marcil: Yes.

[English]

The Chairman: —while he was on parole.

Mr. Marcil: That is right.

The Chairman: Then he came before the court and was placed on probation?

Mr. Marcil: That is right.

The Chairman: I find that difficult to understand. There is no way the court can put a person legally on probation if he is found guilty of an offence within five years of his last conviction, I believe it is.

Mr. Marcil: This case was submitted to me by two detectives of the homicide squad. They say that he had been on parole quite often. This is an occurrence that happened about two or three weeks ago and which is still pending before the courts at this time.

The Chairman: He is in on another offence now?

Mr. Marcil: Yes.

The Chairman: This is the fellow who, while he was on parole, you say, committed a serious offence to which he then pleaded guilty.

Mr. Marcil: That is right.

The Chairman: Then, instead of being sentenced to prison, he was given probation and while on probation has now committed a third offence.

Mr. Marcil: Yes, murder.

The Chairman: A murder? The murder charge is now before the courts, so we do not want to use his name here at this time. I would suggest, honourable senators, that this is a matter on which we should get all the details in a closed session and look into it thoroughly. I cannot understand how a man could be put on probation when he is already on parole. Probation or suspended sentence is available only in cases where a person has not had a record for five years previously, I believe it is.

Senator Quart: Mr. Chairman, to return to the question which I started, what I find most extraordinary is that a parolee would say he did not want to be paroled and yet the parole would go through. In my opinion, it would be rather serious to think that a parole board would parole him against his own will. It sounds as if he was in there so long, being so well looked after in prison, well fed and housed and everything, that he did not want to leave, and they probably wanted to get rid of him.

The Chairman: Mr. Marcil, as I understand what you have said, this man was, in effect, forcibly put on parole when he himself said

to the paroling authorities, "Look, I do not trust myself. I am afraid if I get out and I am loose I am going to commit crimes and I would sooner be locked up." Is this what you are telling us?

[Translation]

Mr. Marcil: Yes, that's right. In fact, I must say, in all fairness, that I have not made any inquiry to the Parole Board about what I just said in order to check the statements made by the police officers or by this man. I can tell you, in all fairness, that I received this report about ten days ago and that I did not inquire into the statement to assert its truth. I am only reporting to you what the police officers who questioned the suspect have written to me about it. I think there is another case which is more "clear-cut" and that I might relate to you.

[English]

Senator Hastings: I wonder if we could call for the file from the Board with respect to this case. Perhaps Mr. Marcil could give you the name.

The Chairman: The undertaking is that he will use the letters A, B and C when he talks to us, but he will leave with me the names of the individuals and we will call for the particular files from wherever they have to be obtained in order to get them in here for particular study. Certainly, this is a most intriguing matter.

Senator Hastings: The man could have been going on mandatory supervision and did not want that. We are jumping to conclusions. We just do not have the facts.

Senator Lapointe: Perhaps he realized only after having been paroled that it was no good for him to be on parole.

Senator Hastings: No, the statement was, "Do not set me free."

The Chairman: The man said it before he went on parole.

Senator Lapointe: I understood it was after.

Senator Quart: No, before.

The Chairman: My understanding is that he was given parole against his own wishes. Am I correct?

Mr. Marcil: Oui, monsieur le président.

The Chairman: Is this your understanding?

Senator Quart: Yes.

[Translation]

Mr. Marcil: Yes, Mr. Chairman. After these events had happened, he told us, while relating his story, that at the time he was released on parole, he had said: "Do not release me on parole, I am afraid I could be a danger for the society" . . . or something like that.

[English]

Senator Hastings: I do not think he would be on parole, if he made those statements.

The Chairman: Well, I agree with you, but the point is that the statement is made here. It is a matter of record. I think we are going to have to take a look at the case and see whether this did in fact happen; and, if it did, how it happened.

As the witness has said, he is repeating what he has been told by police officers with whom he works. Is that right?

[Translation]

Mr. Marcil: Yes, Mr. Chairman.

Senator Lapointe: Had he been examined by a psychiatrist?

[English]

The Chairman: There is something in there that we should certainly look at. Now I believe you have another point to make.

[Translation]

Mr. Marcil: At the moment, a certain Mr. "B" is being held under a warrant by the Coroner as an important witness in connection with the death of a constable in Ste. Thérèse, who was shot during an armed robbery which took place in this locality on Tuesday, October 12th, 1971. After having examined his record, we wish to list for you the offences he has been indicted for, the sentences which were passed in his case, and also the clemency which was granted to him in various occasions. On June 29th, 1960, in Montreal, charged with pocket-picking he was sentenced to three months' imprisonment. On June 13th, 1961, in Montreal, charged with burglary, he was discharged. On September 19th, 1961, in Montreal, after having apparently been charged with burglary, he escaped from prison before his case was due to be heard and, when recaptured, was sentenced to two years for escaping from prison and to one year for the burglary, with concurrence of sentences. On December 22nd, 1961, in Montreal, charged with house-breaking and theft on a truck, he was sentenced to three years for the first count and to three years for the second one, with concurrence of sentences. On October 12, 1961, in Montreal, charged with armed robbery, he was sentenced to five years with concurrence of the one he had been given on September 22nd, 1961. On May 8th, 1964, he escaped from prison. In November, 1964, when recaptured, he was charged with armed robbery, with causing bodily harm and with the possession of a dangerous weapon. He was sentenced to two years for escape from prison, to 15 years for armed robbery, to 14 years for having caused bodily harm with concurrence of sentences, and to one year for the possession of a dangerous weapon, also with concurrence of sentences. In July, 1966, after having escaped from prison again, he was recaptured and charged with attempted murder, with the pointing of a fire-arm and with escape from prison. The attempted murder charge was reduced to purposely causing bodily harm and the sentence for this last charge was 14 years, plus one year, with concurrence of sentences, for having pointed a gun, and then, two years with concurrence of sentences. He served his sentence at the St. Vincent de Paul Penitentiary, and, on November

21st 1969, he was transferred to the Pinel Institute in order to receive psychiatric treatments. Lately, he has been released temporarily from time to time under Code 26. This Code 26 allows the release of the prisoner—you probably know about it—and when constable Labelle was shot, this man had been released under Code 26.

[English]

The Chairman: But what is Code 26?

Senator Hastings: That concerns temporary absence; but from 1960 to 1972, sir, I never heard you use the word "parole". He either finished his sentences or he escaped. How is this related to parole?

[Translation]

Mr. Marcil: If you are telling me that I cannot talk about the Rules nor about Code 26 in as much as the penitentiary's matters are concerned . . .

[English]

Senator Hastings: I am not talking about Code 26. Out of that whole record you have read I have listened for the word "parole". When was that man ever released on parole?

[Translation]

Mr. Marcil: I hope that you will excuse me: I am a layman. In my opinion, both are interrelated. We are before a Senatorial Committee—what we have said is that these surely must be a link between the parole system and releases under Code 26. I cannot understand why police officers today have to take care, first, of people who are paroled and, then, of people who are released under Code 26. I am quite sure that if our society continues to proceed this way, things will not go smoothly. I think that a recommendation from the Senatorial Committee in this respect is absolutely necessary. If the Courts are to carry on as they do now—and I tell you this most sincerely—they might as well be abolished and the individuals could be made to appear immediately before the Parole Board. We might as well abolish the Parole Board and have the prisoners appear before the Warden. I do not know along what lines our structures are developing, but there must certainly be logical reasons for such happenings. On one hand, we follow the Parole System, and on the other, we follow Code 26.

[English]

The Chairman: It seems to me that here we are concerned with two or three different things. What Senator Hastings wanted to bring to your attention is this, that there are various ways in which people can get out of prison. The first is that they can be released on parole, which is a question which this committee is set up to deal with. Then something akin to parole but having no connection with the Parole Board are temporary absences from prisons, or probation which is provided and administered under provincial authority. Now, it is important for our discussion that while these three things all have the same effect as far as the policeman is concerned and as far as society is concerned, in as much as the person who has committed a crime is now back in society, we have a particular

responsibility to deal with a person on parole, that is, where a person is released by a decision of the Parole Board. Do I make myself clear?

M. Marcil: Oui, certainement, monsieur le président.

The Chairman: What we find confusing here is that you give this man's record and it seems that he comes out of prison in an unbelievable number of circumstances, some of which he arranged for himself and some of which were otherwise arranged for him, but in no one instance, as Senator Hastings has pointed out, was he released by a decision of the Parole Board. Is that correct?

[Translation]

Mr. Marcil: Actually, let us say that it is correct, I think it is.

[English]

The Chairman: But what you are concerned about—and we will have to look at this because we are concerned with all aspects of parole—is that here we have a man who has been caught by the police, who has been in prison and who has been repeatedly released into society, sometimes by his own action in escaping and sometimes by the action of various organizations—none of which happens to affect the Parole Board, is that correct?

Mr. Marcil: Yes, it did not affect the Parole Board but it affected society.

The Chairman: You see, what Mr. Street was concerned about was this, you were reading off a record which sounds like hell, to put it bluntly, and Mr. Street was very well aware of the fact that it looked as if he was about to be blamed for something he had nothing to do with.

Mr. Marcil: That was not my intention. We have to look at it this way: as we said in our brief, when somebody gets out of prison, no matter what means are involved, a system should be established whereby there would be one group which would have control of people getting out, whether this be the Parole Board or otherwise. That is in our brief, senator.

The Chairman: Do you want to develop that aspect of it? What you are saying to us now is that rather than have probation, parole, temporary absence and all these other things, if a person is to be let out of prison it should be in the hands of one agency. Is that the point you are making?

Mr. Marcil: That is the point. We have put that in the brief, but perhaps the way we explained it did not allow it to come through very clearly. Mr. Street was possibly a bit touchy, and I could understand it.

The Chairman: He was very understandably upset.

[Translation]

Mr. Marcil: But everybody is getting out without any control. I do not see how a warden or somebody in a prison could have the

qualifications necessary to let somebody out unless these people in high office have good knowledge. . . either as sociologists, before the delinquent is imprisoned, and I think that releasing prisoners from jail has certainly been one of the major problems for the police and society. We mainly want to have some control so that we may be able to say: well, there is undoubtedly somebody who exercises control at the prison level, at the Parole Board level that is to say, all the agencies, because right now, they are involved in duplication and this is what is unfortunate because this duplication prevents either of those agencies from taking serious action at a given time.

[English]

Senator Hastings: Mr. Marcil, you said that people who are being released from prison are creating added responsibilities to your police work. Would you clarify that, please? Are you saying that parolees are creating heavier responsibilities, or are you referring to releasees?

The Chairman: People who are released from prison ahead of time—is this what you are saying, generally?

Senator Hastings: You indicated that people being released from prison are creating heavier responsibilities for the police department. Are you talking about parolees or prisoners who are released on completion of their sentences?

[Translation]

Mr. Marcil: Yes what you are saying is true, Senator, but the fact is that both systems are for the same group, that is two services. When an individual is released, say, from a penitentiary, and another is paroled, the two systems represent a channel, which lead to the same office, then you have three systems. Therefore, at this stage, I cannot tell you which of both groups is a cause of heavier responsibilities for those officers. It would be unfair to tell you that it is one group or the other, because I do not have the necessary figures.

[English]

Senator Hastings: We have the evidence of the Commissioner of the Royal Canadian Mounted Police who has indicated that parolees do not create added responsibility for the police. I would like to clarify this if I could.

The Chairman: Senator Hastings, I wonder if I could refresh your memory. I think I am reasonably correct in saying he said that during the past year they had more than one million reported crimes with around 3,500 people on parole, and his statement was that there were—

Senator Hastings: One thousand infractions.

The Chairman: Yes, and in his opinion parolees did not have over the country as a whole, any substantial effect on the total amount of crimes being committed. Most of you were present when he gave this evidence. Have I stated it correctly?

With this in mind, in your experience in Montreal are you in a position to indicate what percentage of your total police work is

caused by people who are either parolees or releasees—and let us not worry about how they got there. We are talking about persons who got into trouble when, as far as you were concerned, they should have been locked up, or you thought they had been locked up.

[Translation]

Mr. Marcil: The percentage is pretty high. I think that it would be around 35 to 40 per cent, which is a pretty high percentage. I could give you some examples here, while being careful not to mix both problems.

First, there is the individual in question, who was arrested on June 8, 1965, on several charges of armed robbery and sentenced to 20 years; his sentence was to expire on June 7, 1985; he was paroled on June 1, 1970; on June 25, 1970, he committed an armed robbery in a bank, during which he shot and wounded the security guard and was killed by policemen while he was trying to get away.

A second case: on June 8, 1965, he was arrested for several armed robberies, along with the individual I have just mentioned, and was sentenced to 20 years in a penitentiary; his sentence was to expire on June 7, 1987; after four years, he was paroled on December 10, 1969; on June 25, while accompanied by the one I have just mentioned, he was arrested during the robbery.

The fourth case: was arrested on February 5, 1964, for several armed robberies, was sentenced to seven years in a penitentiary; his sentence was to expire March 21, 1971; he was paroled on December 13, 1966, two years and ten months later; on April 24, 1970, he was arrested for armed robbery, he had knocked his victim senseless with the butt of his revolver and had stabbed him with a knife; after investigation, he was charged with nine armed robberies.

Fifthly, in 1965, sentenced to nine years in a penitentiary for armed robbery, his sentence was to expire in 1974; paroled in December, 1969; on June 11, 1969, he was arrested during an armed robbery while he was still wearing a hood.

No. 6, on May 15, 1964, was sentenced to 15 years for several armed robberies; his sentence was to expire on April 16, 1979; on August 21, 1971, he was arrested while committing an armed robbery in a bank, with three accomplices; at the door of the bank about 100 shots were fired at the policemen, one bandit was killed.

Seventh case: on May 8, 1964, was sentenced to 15 years for several armed robberies; his sentence was to expire on November 22, 1977; was paroled on December 7, 1967; on November 2, 1968, was charged with fraud and sentenced to 6 months; on July 21, 1969, was released, his sentence was to expire on March 9, 1979; on December 5, 1969, was arrested for break and entry, sentenced to 10 months, in addition to the part of his sentence which had not been completed, namely, 3,549 days; on September 4, 1970, he was released, his sentence was to expire on June 23, 1980; on August 21, 1971, he was arrested during an exchange of fire at the Royal Bank, where he had just committed an armed robbery with three accomplices wearing hoods, one bandit was killed.

Eighth case: on January 23, 1969, was sentenced to five years for armed robbery; his sentence was to expire on January 28, 1974; was put on parole in 1970, one year and eight months later; on January 8, 1971, he was killed on the spot during an armed robbery while he was shooting it out with policemen.

Ninth case: on January 11, 1967, sentenced to five years for armed robbery, his sentence was to expire on September 25, 1971; on June 23, 1969, two years and a few months later, he was put on parole; on March 29, 1971, he was arrested as a result of an armed robbery committed in a drug store, while he was wearing a hood and robbed all the customers present.

Tenth case: on December 18, 1964, was arrested for armed robbery and indecent assault, was sentenced to nine years in prison, his sentence was to expire on January 7, 1981; it is 19 years, I apologize, there is a mistake here, he was sentenced to 9 years in prison, his sentence was to expire on January 7, 1981, he was arrested in 1964, there is a mistake here.

Eleventh case: it is the last one, on May 5, 1966 he was arrested for several armed robberies, was sentenced to four years, his sentence was due to expire on May 24, 1970; on October 18, 1967, he was put on parole, one year and a few months later; on May 15, 1968, he was arrested for armed robbery, wearing a disguise, attempted murder, car theft, and sentenced to 25 years in a penitentiary.

[English]

Senator Hastings: Mr. Marcil, can you tell the committee how many men have been released on parole in the Montreal area over the last ten years?

Mr. Marcil: I do not have that statistic, sir.

Senator Hastings: Well, you have brought to our attention ten failures and, I would say. . .

[Translation]

Mr. Marcil: We have simply given examples of people who have mainly committed robberies with violence. At the beginning, I did say that we are not against paroles. We are against people who take advantage of those paroles to commit offences against society by using violence. I am repeating and maintaining that we are not against people who are put on parole.

[English]

The Chairman: Honourable senators, I wonder if this might be a good stage at which to take a short recess.

Senator Quart: Mr. Chairman, may I just suggest that the name. . .

The Chairman: We will get to the names later, Senator Quart, and they will be made available for the private record.

Senator Quart: That is not what I am saying, Mr. Chairman. I suggest that the name that slipped out be stricken from the record.

The Chairman: Yes, I will see that that is done. That name will be stricken from the record.

A short recess.

The Chairman: Honourable senators, just before we recessed, I, in a very ungentlemanly manner, cut Senator Quart off. I apologize for that, but we had to cut it off at some point.

Senator Quart: I am long winded, in any event.

The Chairman: I hope to reinstate myself with you by giving Senator Quart the right to ask the first question.

Senator Quart: Mr. Marcil referred to the overload of work that the police have in connection with the supervision of these individuals. Supposing you could get extra men—perhaps ten or fifteen; I am generous with somebody else's money—either through the National Parole Board or through the police department or wherever you could get them, would you set up a special office in Montreal for that purpose?

[Translation]

Mr. Marcil: Yes, I think it is necessary; there is no doubt that the people who are there, working for the police, each section with which a policeman is concerned, it requires some qualifications. There are interviews and I think it would work with a credit system, college courses, etc. I think the individuals who would be working there should definitely be trained, to meet the needs of that office.

But, there is perhaps a question you have asked me, Senator. You asked me how many individuals there might be on parole. Right now, there are 500 of them out of 2,000 to 2,300 potential prisoners. Among the convicts who have been released, 500 of them, there are, each month, about 100 who, do not turn up.

Senator Quart: Do you find Mr. Marcil. . .

Le président: Quels étaient ces chiffres?

Mr. Marcil: The document, this is taken from the office, say, which is inherent,—or responsible for paroles; right now we have 500 convicts who have been put on parole out of possibly 2,000 to 2,300 inmates,—among those who have been released. . .

[English]

The Chairman: Are those people on probation or are they parolees?

Mr. Marcil: Well, I have told you the statistic which the bureau has to work with. To be quite frank, I do not make a distinction between parolees or those on probation. The bureau has 500 people to work with, and 100 of those do not report each month.

Senator Hastings: But I submit to you, sir, that those men cannot be parolees. If they were parolees, they would have to report. Those 100 must be out on some other form of release.

Mr. Marcil: The information I have, senator, is that there are 100 who do not report to the office.

The Chairman: That is out of a total of 500?

Mr. Marcil: Yes.

The Chairman: In other words, 20 per cent of them do not report?

Mr. Marcil: Yes.

Senator Hastings: But we should make it clear, Mr. Chairman, that they are not parolees. They are out on some other form of release.

The Chairman: They are people who are required to report to the police department, or some other types of agency, but who do not so report.

You do not know what percentage of those are on parole, probation or a temporary absence permit?

Mr. Marcil: Our representation is that there should be a central office for all these people in order that there can be better control. I am a police officer, but I have worked in this brotherhood for about twelve years now, so I do not make the distinction, as the ordinary citizen does not make the distinction. I do feel it would be a great help if there was a central office for all these groups to report to.

The Chairman: In other words, if a man who ought to be in jail is out of jail, you do not care how he got out. All you know is that he is the same kind of problem as far as you are concerned.

Is that a fair statement?

[Translation]

Senator Lapointe: Is there no way to know how many parolees; there are and how many are temporary absent? Is there no way to make a distinction between both?

Mr. Marcil: I believe there might be a way, as the senator was saying. I simply think that what is happening here, — I think that the problem we are submitting to the Senate committee is one about the duplication of the two or three groups who are not sufficiently controlled; at one time, a group is not aware of what the other group is doing and that is the problem. The police officer must get three or four groups together and then attempt to make the distinction between the parolees, those who are in jail, those on probation, and so on, to find a way. I think that all the groups should be brought under one control so as to have really someone or something permanently responsible.

Senator Lapointe: Do those who deal with parolees, the social workers, get in touch with you in connection with supervision operations?

Mr. Marcil: Yes, they get in touch with police officers.

Senator Lapointe: On a regular basis?

Mr. Marcil: Yes, regularly; we have an office on Bonsecours Street and they are regularly in contact with police officers. Again, I repeat that I am not in that particular environment and I do not know what is, for a police officer, the difference between a social

worker or someone who deals with the parole system or anyone else. I am not in this environment.

[English]

Senator Hastings: I wonder if I could return again to the violent crimes which you referred to. On page 5, sir, you say that you submit in particular that in serious cases the Board must possess very precise information as to the personality of the prisoner. Jumping to page 7, you say that you must have information well beyond the stereotyped and impersonal formulas.

The implication here is that the Board does not have that information. I am wondering if you are aware of all the information the Board gathers with respect to a violent offender when he applies for parole.

[Translation]

Mr. Marcil: One part, Senator, one part of what you are saying only. When we met with police officers working in this section, we have been told that the Board has no information on the individual's childhood, or on the circumstances which led him to commit a crime. We simply take into account the context of the crime committed, but we do not know anything about the circumstances that led him to such an act and, in this submission, it is said that it might be useful for the Board to be aware of all the facts regarding the individual's development during his childhood to attempt to find ways of rehabilitating him. I am told that presently this is not being done.

[English]

Senator Hastings: Getting back to my question, are you aware of the reports which the Board requires before making a decision with respect to a violent offender?

Mr. Marcil: No, I am not, sir.

Senator Hastings: We had Mr. Street as a witness before us and we asked him questions particularly with respect to violent offenders. He told us that they require psychologists' and psychiatrists' reports and that they go into very extensive research with a decision could not be made by a two-man board but had to be referred to a five-man board. The implication you give us here, however, is that the Board is not getting this information when the facts, according to Mr. Street, are just the opposite, sir. The Board goes to great lengths to secure the most complete reports with respect to these violent offenders before parole is considered.

[Translation]

Mr. Marcil: I believe that Mr. Street, or his office, is faced with a rather difficult task. Mind you, if they had been 100 per cent successful, we might not be here to discuss this. The problem is that we are trying to make it as fool-proof as possible, and that presently—and the cases that I submitted earlier,—notwithstanding the Parole Board or the members sitting on it or the psychiatric treatments they received, the fact remains that these people went back to society. I gave you a rather limited sampling. We should

perhaps have entered into more details. The fact remains that they went back to society, and that they are still committing violent crimes against society.

[English]

Senator Hastings: But you nevertheless make the implication that the Board is not doing this, and I submit to you, sir, that the Board goes to great lengths. It goes to every possible length to ascertain the information before making a decision. We had occasion to go through a file of a parolee, and I must confess that I was impressed at the depth of the information which the Board members had before them before they made a decision.

The Chairman: Senator Hastings, perhaps Mr. Marcil is making a distinction in that he is making a general observation about all releasees and is not referring solely to parolees, as such.

Senator Hastings: He was making reference to the violent offenders, sir, and, getting back to what I was asking, I asked him if he was aware of the depth the Board goes to and he, said, "no".

Mr. Marcil, have you ever seen a Parole Board file?

Mr. Marcil: No, sir.

The Chairman: Well, honourable senators, I think it would be no exaggeration to say that we have before us this morning in Mr. Marcil a man who, because of the organization he is with, has more to do with and more knowledge of the various types of crime and criminals than anyone else who has appeared before us so far. I think it might be useful if he were to explain to us something about the different categories into which criminals fall. I have in mind particularly the once-in-a-lifetime criminal, such as the person who becomes an embezzler through opportunity or the person who commits a crime of passion, which is not likely to be repeated; and I have also in mind the person who, on the other hand, is the dedicated criminal.

Does what I am saying make sense to you at all, Mr. Marcil?

Mr. Marcil: Yes, sir, certainly.

The Chairman: Could you explain to us the different types of people who are involved in crime that you have to deal with, and then perhaps indicate to us the ones you think give you the greatest difficulty?

[Translation]

Mr. Marcil: Could you give me a few minutes to find the document?

Let us say that the pattern is approximately—if I understand the Chairman's question—the variety of crimes committed according to the age of the individual, given in progression?

[English]

The Chairman: In other words, there are people who, you might say, just fall into crime—the occasional criminals. And then, on the other hand, there are persons who are dedicated criminals, those who make the decision very early in life that they are going to earn their livelihood by crime.

Mr. Marcil: I think the pattern that we have is that as a youth the person starts his life of crime. I do not have an individual case, but usually the pattern is the same.

[Translation]

First of all, you have burglary; secondly, they steal cars; there is the individual who commits sexual offences, goes back to stealing, then to receiving and concealing, stolen goods on to assault and battery and armed robbery; later on in his career, he goes back to fraud.

This is more or less the pattern. I think that those who are in criminal circles will be able to confirm this. I am not saying that this is true in 100 per cent of the cases, but it is the initiation pattern followed by the criminal. However, I do not have the statistics that you are asking for, Mr. Chairman, that is, a definition of the categories of people who commit crimes.

Senator Lapointe: Who are, according to you, the prisoners who should not be paroled?

Mr. Marcil: First of all, we say that for a first offence with violence, he should get half of his sentence. If he repeats his act of violence against society, parole should not apply to this individual.

[English]

Senator Laird: In your opinion, Mr. Marcil, what part do drugs play in the commission of crime?

[Translation]

Mr. Marcil: I believe that in the last three or four years, drugs have played a rather important role as regards crimes, especially violent ones and people will tell you, especially police officers, that in connection with the use of fire-arms and bank robberies, most of the offenders have been taking barbiturates or some other drug. In the last three or four years, this has been a rather common phenomenon.

Senator Lapointe: Is this the case only with younger people, let us say under 25 or up to 35 years of age or what?

Mr. Marcil: Up to 35, especially in the case of violent crimes. I can tell you that in cases of armed robbery, involving individuals, let us say, 32 or 33 years old, most of them are under the effect of drugs or narcotics.

[English]

Senator Hastings: I am very much interested in the recommendations made by the Brotherhood, and I wonder if we could go through them and perhaps elaborate on them a little. In the first recommendation you say:

1. That a method for the selection of prisoners be established without delay, in order to distinguish the most serious cases;

Again, I suggest to you that that is in effect at the moment, but the implication here is that there is no selection, while, from my experience, there is selection with respect to serious cases.

[Translation]

Mr. Marcil: In fact, Senator, I repeat this again: the information I submitted was prepared in co-operation with police officers. If you say that this is what is being done presently, I have nothing else to add.

Mind you, I do not want to appear too brief,—but I am the chairman of the Brotherhood and I must represent, as I said in the beginning, their opinions on the parole system. We might be confusing the problems. However, we discuss paroles at length during all our meetings and when we prepared this presentation, we discussed it with police officers who are involved with paroles and we used the information they gave us to prepare our brief.

[English]

Senator Hastings: When they make that statement I do not think they are aware of the safeguards being used by the Parole Board. The Parole Board is not releasing just anybody and everybody.

Then we come to recommendation number 2 which says:

2. That those who commit crimes of violence be denied parole until they have served at least half of their sentence, when the conviction was the first for a criminal act of that type;

Is a man not released when he is ready? Do we not operate on the assumption that the time to release a man on parole is when he will benefit and when he is ready for it?

Mr. Marcil: We live in a society, sir, that has no more deterrent for anything. There is nothing. The death penalty is gone. It is very easy, no matter what type of crime he has committed, to get parole. But if a person commits a crime against society and he knows that on his first offence he will serve half his sentence, and if he is a repeater, even though the death penalty is now gone, I think it would be a deterrent.

Senator Hastings: So you are demanding punishment.

Mr. Marcil: Not punishment. Let us say it is a deterrent. It is not punishment, sir.

Senator Hastings: Well, you are saying it is a deterrent, while most witnesses say that prison sentences are simply not a deterrent to crime. I am very much surprised that you would make that statement.

Mr. Marcil: Again, sir, I am not a sociologist, and I certainly would not claim to have the necessary qualifications, but that is a recommendation that we think it would be a deterrent. Again, we are in a society where anybody who commits a crime and is committed to imprisonment has the same chance as everybody else. Everybody has the same chance. But I do not think a person who has committed a crime with violence against society should get the same chance in front of the Parole Board.

Senator Hastings: You wish to punish him more?

Mr. Marcil: I do not say that, senator. He has been judged by his peers and he has had a fair trial. There are witnesses—and some of them have been crippled—who have given testimony, and he has had all the chances that society can give him to make a new plea out of it and he has been found guilty and he has been sentenced. I think, sir, he has had a fair chance.

Senator Hastings: And he is capable of change.

Mr. Marcil: Again, if he is a first offender, he should realize that the crime he has committed is a crime with violence and he should not go back to that way of life. Somebody who is an embezzler or something like that, I just do not see both of them on the same level.

Senator Hastings: I disagree. I do not think it matters what the crime is. I think the man is capable of change.

Then in recommendation number 4 you say:

4. That a dossier in depth on the character and personality of the candidate for parole be prepared, especially in cases of grave criminal acts and recidivism;

Again I submit, sir, that that is being done. Can you tell if something is missing?

Mr. Marcil: What I was told is that certainly they have taken an account of his time in prison, how he reacted and what was his reason for committing the crime. But what we were told is that there is no investigation in his dossier as to how he started as a youth with his parents, and so forth, and this was brought to our attention.

Senator Hastings: Which is not the case, sir.

The Chairman: You are not a witness senator.

Senator Hastings: I think we should have a course in what the Parole Board does.

Mr. Marcil: There are not too many people who know that, sir, and I must confess that I am one of them.

Senator Hastings: There seems to be a great deal of misunderstanding all round.

Mr. Marcil: Ninety per cent of our society, sir, are in my situation.

The Chairman: What the witness is saying is this—and you can tell me, Mr. Marcil, if this is correct: Your organization feels that at the present time people are being released without there being adequate searching into their personal histories before the decision is reached. This is what you are saying, in effect?

Mr. Marcil: That is right.

Senator Hastings: Then you say:

5. That a portion of this dossier be prepared by the policemen concerned, . . .

Do we not have that? Actually do not the police prepare the report at the time of the offence? The man preparing the release consults with the police, and I cannot see how much more police involvement you want, unless it is to make the decision.

Mr. Marcil: I was told, sir, that the policemen—They are not involved, they have no say in the decisions of the Parole Board.

[Translation]

Senator Lapointe: There is not even one policeman on the Parole Board?

Mr. Marcil: No.

Senator Lapointe: Do you think it is because there is some kind of a prejudice against policemen?

Mr. Marcil: No, I would not take it that way. In fact, senator, I think your question is very relevant. It is perhaps, again, that the Senate Committee in its recommendations will see fit to have the policemen participate and they will perhaps be able to provide the Parole Board with additional information that it may not have. What we are told is that everything depends on the way he behaves in prison. It is one of the points that has been raised. If his behaviour in prison is excellent I think he has all the chances of returning to society. What we are told is that it is not a criterion—his behaviour in prison in regard to his return to society—it is one of them but it is not the most important one.

Senator Lapointe: Do you think that sometimes prisoners will simulate good behaviour and show a little hypocrisy in order to be released more quickly, without having the firm intention of rehabilitating?

Mr. Marcil: That is quite true, senator. That is what happens.

Senator Lapointe: But are there not psychiatrists with the Board who could detect this, who could determine whether the candidate for parole is really sincere or whether he is doing some simulation or hypocrisy, if you want to put it that way?

Mr. Marcil: I do not want to be prejudicial to psychiatrists because I think they are certainly doing good work, but surely there are cases that escape them. We are under the impression that good behaviour in prison means a very good chance of being on parole and that it is not the criterion that should be mainly retained.

Senator Lapointe: Then, in your opinion, what should be the main criterion to be retained for paroles?

Mr. Marcil: I do not pretend to have inborn knowledge of psychology or sociology but the question is in fact to determine what will be his *modus vivendi*, what type of life he will be living

once he has been returned to society. As I put it clearly at the end of the last section, it is very difficult today for an individual returning to society to adapt himself, to fit in that society because society generally rejects him, and I think we are aware of that. I think the individual that is being released has a lot of problems facing him. It is not easy to find a job. Furthermore, as you were saying, if he returns to a cosmopolitan city like Montreal where he can find all the ingredients liable to bring him back to a life of crime there is no doubt that there is a problem, and we are aware of it.

[English]

Senator Hastings: Those are exactly the points the Parole Board takes into consideration when it grants parole.

Mr. Marcil: Senator, I think you have the point. But I would like to see a system come into effect which is going to work. I do not think there is a system which is working now. You are trying with the best tools you have available, but it is not working.

Senator Hastings: That is your opinion.

The Chairman: In other words, people continue to commit crimes.

Mr. Marcil: I do not blame the people.

The Chairman: No, the fact is that regardless of what system we use we have a great number of repeaters.

Mr. Marcil: Yes.

[Translation]

Senator Lapointe: Do you know of cases where a man after being on parole, committed a second crime, was returned to prison and was later on paroled again. Do you know of cases where they have been paroled a second time?

Mr. Marcil: Twice. I think I quoted some earlier.

Senator Lapointe: But, to what do you attribute that decision?

[English]

The Chairman: Just a moment, those incidents which were read had reference to people who, for various reasons, were released from prison; but they were not solely people who had been released on parole. They may have been released for other reasons as well. Some of them actually escaped.

[Translation]

Mr. Marcil: Mr. Chairman, the last nine cases I quoted were parole cases.

[English]

The Chairman: Those people were granted parole by the Parole Board.

Mr. Marcil: Yes.

The Chairman: Will you give me those names, so that we can obtain the files?

Mr. Marcil: Yes, sir.

[Translation]

Senator Lapointe: But why, Mr. Marcil, did you not think it advisable to bring with you one of the three policemen who deal specifically with those cases?

Mr. Marcil: That is a very good question. You must remember, senator, the position I am in as president of a union and that the police department of the urban community is not required to provide any documents, any personnel to the union and when I questioned the policemen it was only through mutual understanding that I was able to obtain that information. Even if the policemen had told me, I refuse to give you that information, there is absolutely nothing in the world I could have done about it because they come under the jurisdiction of the police department, and my concern is the union; they are my members as union members but as policemen they come under the authority of the police director and it is therefore difficult for me to obtain the information that you might be seeking because I am representing the union members.

I would like to mention, senator, that the Montreal police department has prepared a brief with those policemen and that brief will be submitted to the Chief of the Province of Quebec and I have been assured that he would be interested in submitting a brief and appearing before you. I hope at that time that the same policemen who provided me with documents and who provided them to the police chief will be here to answer your questions.

[English]

Senator Hastings: Recommendations 9 and 10 of your brief pertain to surveillance and supervision of parolees. You are asking that this be intensified and improved. You are also asking that the police department be used in a more precise manner. Why?

[Translation]

Mr. Marcil: First, what we are told is that the Parole Board presently has more work to do than it can absorb and that surveillance certainly does not meet the principles of parole, probably because of a shortage of personnel.

The second point is that the police department be used in a more precise manner for the surveillance of such individuals. I would say that at the present this is done in a very loose fashion. Here again, because of a shortage of personnel, as I said earlier, there are only three policemen and—I think this is very important, and Mr. Street here will tell you—I think there should be closer contacts at that level between the police force and the Parole Board. I think this is perhaps one of the points the Committee should be studying. The line seems to be well drawn between the Parole Board and the

policemen. Certainly, one could think there should perhaps be closer association between policemen and the Parole Board.

Senator Lapointe: Presently, are the three policemen you were talking about a while ago morally responsible for those who are on parole or are they the responsibility of the social workers?

Mr. Marcil: Part of the responsibility goes to the social workers and part to the policemen who meet the individuals when they have to report. Of the three policemen I mentioned, I must say that one works during the day, one at night and one does the supervising.

This means that for each shift you have a policeman to meet those needs, so it is impossible! How do you want to . . .

Le président: C'est pour toute la ville de Montréal qui compte deux millions et demi d'habitants.

Mr. Marcil: There is no contact. I think this is very important. If the Parole Board maintained good contacts with the individuals—I think that in our present society we must do everything we can so that the prisoner or parolee has the same contact with the policeman. He must learn to know him, to talk with him so that he will understand his problems. This may be due to a shortage of personnel; it is now simply a question of coming in and going out without any contact. I think the present way of meeting with the individual parolees is not consistent with the general principles of parole.

Senator Lapointe: Yes, but do your three policemen deal only with the parolees of the City of Montreal or the urban community?

Mr. Marcil: Of the urban community; it represents 2,200,000 people.

[English]

The Chairman: —two and one-half million people.

Senator Laird: Mr. Chairman, there is one matter I think we should put on the record. You mentioned three instances where a prisoner might be at liberty. For the sake of the record, I think we should now note that there is a fourth situation which this committee approved of in committee last week through its approval of Bill C-2, namely, that there can now be an unconditional release by a judge in the event of not only a finding of guilt but a plea of guilty.

The Chairman: There is absolute discharge, conditional release, or unconditional release. When you get into the area of conditional release, of course, you are talking about probation. The next thing is the temporary absence permit which can be provided by the penitentiary system and then, of course, parole which is the one with which we are chiefly concerned.

Senator Laird: Yes.

The Chairman: It is somewhat difficult to distinguish between them.

Senator Laird: I wanted to get that straight on the record.

The Chairman: Thank you, Senator Laird.

[Translation]

Senator Lapointe: When you suggest that a specialized department be set up to find jobs for those people as soon as they come out of prison, are you suggesting that it be a department, an agency other than the Department of Manpower, or that it be done within the Department?

Mr. Marcil: In fact, I think it should be a body where continuity would be ensured because what we have sought in the brief is precisely to have continuity in the parole system; whether it is at the level of penitentiary systems, paroling, surveillance, co-operation with the police department, I think everything should be looked at in the same scope, that the Parole Board should provide a service with its experience, the knowledge it has of prisoners and it is certainly our suggestion, if it is not within the Department of Manpower, it should be related to the Parole Board or another body which would be set up and would be consequential to the individual, and would follow him in society. He lives within society, he is under surveillance, and then there is an employment office, he is certainly following certain steps that will find a place for him in society. Regretfully, because of what is being done at the moment he cannot be rehabilitated in society. I think the present weakness lies within the parole system. It is not their fault, it is that of the structures.

Senator Lapointe: Do you think the Parole Board should establish relationships with those employment offices?

Mr. Marcil: Yes. There should be continuity, there should be relationship. To answer Senator Lapointe's question, if an individual loses his job—the people from the Parole Board could certainly be in a better position to check on that—was he fired because he is an ex-prisoner and so forth, or because he was not doing the job he was being asked to do by the employer, or was there discrimination against him. Then, if he came back, I think society would already have a picture of the individual who has tried to rehabilitate and who has been rejected one more time by society, perhaps we would then be in a better position to help him.

Senator Lapointe: Is it not up to the social worker to do that, to maintain surveillance over his protégé and, if he is unlucky with his first job, to find out why he lost it and try to find him another one. Is the social worker bound to do that, or is it nobody's responsibility?

Mr. Marcil: No. I am afraid, senator, I could not give you an answer at this time. I do not have an elaborate idea as to what are the duties of a social worker. Sincerely, I do not have that answer, senator.

[English]

Senator Hastings: Mr. Marcil, you indicated a little earlier that you did not think the warden had the qualifications to grant a temporary absence permit. Could you enlarge on that statement, please?

[Translation]

Mr. Marcil: In fact, you must notice, as you said a while ago, and as you have told me yourself, that when a prisoner is placed on parole, this is done by a board of three or five persons before which the individual, before he is released, must take a psychiatric test, etc. I do not know and I do not think that a prison warden has at his disposal the facilities you mentioned for release on parole. I believe that you have told me, and you have insisted on parole releases, that I certainly would not see a prison warden with the same responsibilities because he does not have—what I mean is—he does not have the same personnel to guide him in the release of a prisoner.

Senator Lapointe: But is it the warden alone who has the power to grant a leave to one prisoner or another, or is there an office, within the prison, made up of a few persons for the purpose, or is it only the prison warden who can release Mr. So and So?

Mr. Marcil: Hon. Senator, I do not have this information.

[English]

Senator Hastings: The warden or director of an institution does not grant a temporary absence permit on his own. He has the benefit of the inmate training board, on which there is a psychologist and a classification officer, among others. The whole board examines the application for a temporary absence permit and then makes a recommendation to the director. It is not the warden or director of the institution who makes the decision.

The Chairman: Honourable senators, we have not asked the witness what he means by parole. This is a question we have asked previous witnesses in our endeavour to satisfy ourselves as to what parole is.

When you speak of parole, Mr. Marcil, what exactly do you mean and what do you think its purpose is?

[Translation]

Mr. Marcil: As a matter of fact, let us say, when the prisoner has returned, he has the right, I believe, after six months, to apply under the parole system. In the first place, I think that the board is duty bound to hear him, to consider the file, to examine the infraction and the purpose of the parole. If the request of the individual is considered, it concerns his re-integration into society under controlled surveillance, in order, I believe, to assist him, with the help of social workers, in re-establishing himself into society. If the person in question breaks the rules, or does not meet the standards established by the Parole Board, he can then be reincarcerated and forced to serve his sentence, to continue serving the sentence he had been given.

But, in my opinion, the purpose of the parole system is to return a person to society, whereas Senator Hastings stated that, these days, one must consider it in another social context. I also believe that we cannot treat the individual in the same way as he was treated in the 19th century. We must try to re-integrate him as quickly as possible into society and, if he does not meet his

commitments with the Parole Board, he is then supposed to complete his sentence.

Senator Lapointe: Then, do you consider this as a right for everybody, or as a reward for good conduct during the first six months?

Mr. Marcil: I believe, indeed, that every one has the right to be considered by the Parole Board. Basically, I think it is everybody's right. But to put it simply, this should be amended: this right applies only in relation to the crime committed. Once again, this is unfortunate if you remember that first offenders might be put together with individuals who have a rather long career in crime. On the other hand, there also are people who commit minor crimes and these people certainly have, in my mind, the right to every possible chance in society. Briefly, what we find is that they are all placed at the same level for parole; I agree that they should be considered, but not, for parole, at the same level as people who have committed violent crimes.

Senator Lapointe: Do you think that paroles should be granted more to young people or to old people?

Mr. Marcil: Once again, this depends on cases. The Parole Board, with the personnel at its disposal, will certainly have to decide, even if it is a young person, and there are young people you can do nothing with really; they have had many chances, but, at a given time, even though they are young, they have started a crime wave against society. I believe that every case must be left to the discretion of the Parole Board. I would not make any differences in this respect.

[English]

Senator Hastings: Mr. Marcil, last year there were about 5,000 paroles granted. Three thousand of them were provincial and 2,000 were federal. Is that not an indication, sir, that they are doing exactly what you say they should? They are granting many more paroles in provincial institutions with the young offenders and first offenders.

Mr. Marcil: We are not against that, senator.

Senator Hastings: But you imply that they are not doing that. You say they put the first offender in with the old offender.

Senator Lapointe: He said they put them in the same place, in the prison.

Senator Hastings: I understood you to say that the first offender got the same consideration as the old offender. Certainly, there must be some selectivity.

Senator Lapointe: They are placed in the same building, the same place.

The Chairman: Mr. Marcil, do you see parole as a lightening of the sentence that has been imposed by the courts? Do you see it as

another way of a man's serving his sentence rather than being in jail? Or do you see it as a rehabilitative process?

[Translation]

Mr. Marcil: I see it as the last. I find it in the last one. It is a process of rehabilitation. There is also a point I would like to raise.

Le président: Oui, s'il vous plaît.

Mr. Marcil: We have submitted a brief to the Minister of Justice, in the Province of Quebec, on the White Paper of the Justice Department, of the Minister of Justice. The Bar made representations. The Minister of Justice asked one question to the Bar's representative, as follows: "In your experience, can you tell us whether, when a judge passes sentence, parole, the procedure of parole, sways the judge's decision in his sentence?" The representative of the Bar said: "I certainly cannot place myself in a judge's position, but I firmly believe that judges are swayed in their judgments by the parole system. I think this is basic, and that it is very important from the point of view of justice when a representative of the Bar says to the Minister of Justice that it seems to him that the judges' decisions are influenced by the parole system, because as a result our society's system of justice is put in doubt. Of course this is something that struck me.

Senator Lapointe: But, do you mean to say that judges are influenced and that they give longer sentences because they know that they will be reduced. . .

Mr. Marcil: It is rather the other way.

Senator Lapointe: . . . or is it the opposite?

Mr. Marcil: It is the opposite.

Senator Lapointe: No, it is the opposite. Il a dit que c'est le contraire.

[English]

The Chairman: From your experience, do you feel that judges tend to sentence more severely or give longer sentences because they know that parole is available to the accused?

[Translation]

Mr. Marcil: As a matter of fact, if I answered for myself, I would think that I am certainly not the properly designed person to interpret the sentence of a judge. Surely, I am not in close enough contact with the courts to ascertain this thing, but, what I repeat is that the Bar's representative who says to a Parliamentary Committee on legal affairs: "I am under the impression that indeed, this influences their decisions in the sense that they will reduce the sentences in order to comply more or less with the standards of the parole system."

[English]

Senator Williams: Well, is this good or not good?

The Chairman: That is what we are going to have to decide later.

Senator Quart: Mr. Marcil, previous police witnesses have stated that they do not think the police should be involved in supervision. What does your Brotherhood think of that?

[Translation]

Mr. Marcil: Please note that I believe that the police officer must play a prime role. One of the big problems facing certain groups,—I do not want to start judging intentions—is the money factor, the personnel factor, the availability factor, and the large problems we face presently, at the level of the urban communities and the cities, are always concerned with money; it costs an awful lot to-day to operate police services and we try, as much as possible, to put everything on the front line, but for things such as this, I believe it is very important that the policeman should be able to play a role, not a simple role of watchdog, shall we say. That is not it. This is not the role I would like the policeman to play. His would mainly be the role of a counsellor, of a person who would really be accepted by the individual and who would have a corresponding education. I believe that, all along the brief, we have insisted on the policeman playing a role, not, I repeat, the role of a watchdog, or of the policeman who is always looking, trying to find fault, but rather that of the counsellor who really tries to help the parolee return into society.

[English]

Senator Quart: So, therefore, I conclude, Mr. Marcil, that if you had sufficient staff to give supervision you would really think the police would be the logical supervisors.

Mr. Marcil: I think so.

The Chairman: I think we have had a good run at it, honourable senators.

Senator Hastings: If I may add one observation, Mr. Chairman, I wish to thank Mr. Marcil for his very well prepared brief. But, again, the brief indicates to me, sir, a complete misunderstanding and lack of knowledge of the operations of the Parole Board and, certainly, a complete breakdown in communications between the various jurisdictions of the correctional field, as you have indicated, right from the police officer to the judge, to the director of an institution, to the Parole Board and back to the streets. The various factions take a whack at the offender and send him on, one not knowing what the other is doing, but, as you have pointed out, the offender goes through it all.

We have to bring the various jurisdictions together, into closer liason, so that the various factions will have a knowledge of what the others are trying to accomplish.

The Chairman: The brief has made it abundantly clear that there are certain areas in this field in which there is work for this committee.

Senator Hastings: And work for the Parole Board to educate the public and to undo the damage that is being done by statements that are being made.

The Chairman: Thank you very much indeed, Mr. Marcil.

M. Marcil: Je tiens à remercier les membres du Comité, monsieur le président, de nous avoir reçus.

The committee adjourned.

APPENDIX

A BRIEF
from
THE MONTREAL POLICEMEN'S BROTHERHOOD INC.
concerning
"The National Parole System"
presented by
GUY MARCIL

PRESIDENT, The Montreal Policemen's
Brotherhood Inc.

PRESIDENT, The Quebec Federation of
Policemen

DIRECTOR, The Canadian Police Association

VICE-PRESIDENT, The International Conference
of Police Associations

-I-

The Montreal Policemen's Brotherhood Inc., signatory of this brief, is a trade union association formed under the provisions of the Professional Syndicates Act of Quebec.

The Brotherhood groups, as members, the policemen of the Montreal Urban Community up to and including the rank of captain.

Its aims are the study, defence and development of the economic, social and professional interests of its members and, more specifically, the negotiation of collective labour agreements. Thus the Brotherhood is, within the meaning of Quebec labour laws, the certified bargaining agent for approximately five thousand (5,000) policemen and police officers of the Montreal Urban community Police Department.

For some years now, the Montreal Policemen's Brotherhood Inc. has sought to broaden the sphere of its activities by occupying itself to an increasing degree with the professional training of the policemen and his unique role in society.

Moreover, the Brotherhood has frequently intervened before government bodies, when it believed that its opinion could be a useful contribution to the welfare of the State and its citizens. It is in this spirit that the Brotherhood wishes to submit certain recommendations concerning the parole system in Canada.

-II-

It seems hardly necessary to state that the objectives sought by the parole system unquestionably enjoy general approval. But in reality, experience forces us to observe that the implementation of the system is extremely ticklish and threatens to decrease the scope of the desired objectives.

Whilst acknowledging that the opportunity to rehabilitate must either be given or withheld, one must avoid endangering the security of society and of the other citizens, and upsetting a balance which is difficult to maintain.

The primary function of the policemen is the pursuit and apprehension of criminals and delinquents, to bring them before justice; it is in this way that he assures the respect and protection of

individual and collective rights. Anyone will admit that this is a painful and difficult task whose effectiveness and results must not be diminished by excessive generosity at the parole level.

Certain members of police forces can at times have the impression that their efforts to resolve crimes are nullified within a short time by the reinstatement of the offenders in society.

We are prepared to disclose, in confidence, cases which justify us in seriously questioning the application of certain guiding principles of the parole system. It is in the category of the most serious cases that, in our view, the danger exists of nullifying the efforts of the police in the prevention and solution of crimes.

The examples that we possess allow us to entertain misgivings as to the prudence used in granting parole to inmates convicted of serious crimes against persons or property, or recidivism. We submit that in cases of this nature, the Board or its representatives must act with more intense knowledge of the subject and with greater caution.

These contentions lead us to pinpointing three main weaknesses:

1. an inadequate selection of subjects for parole;
2. the lack or insufficiency of information or studies concerning the personality of the subjects;
3. inadequate use of the police departments.

-III-

In this chapter, we shall elaborate upon the main elements of the three shortcomings listed above.

The Selection of Subjects

In the eyes of the Act, it does not seem useful or necessary to draw precise distinctions between the different types of crimes and of delinquents, except at the time when the prisoner may purge his sentence on parole.

It is no doubt true that the Board must take into account the seriousness of the offences committed when applying the Act, but unfortunately we are not assured that it acted with prudence in granting parole to subjects dangerous to Society.

We can only hope that in future the necessary shades of variation and the distribution will be established as between the various types of inmates.

Personality Information and Studies

We submit that, particularly in serious cases, the Board must possess very precise information as the personality of the prisoner. It is our view that community inquiries now being conducted are not sufficiently thorough to give a precise enough idea of the candidate for parole.

This knowledge of the personality seems to us paramount when the subjects are inmates who have committed crimes of violence, or who are repeat offenders.

We are convinced that the Board or its representatives would alter the study and the decision in a number of serious cases if they had such precise information.

The character of the candidate, his prior habits, are, in our opinion, just as important and conclusive as his behaviour while in penitentiary. Yet this latter element seems to be the factor which, if not essential, is at least the most important.

It is of course likely that the use of such precise methods requires considerable expenses, but we regard them as useful for the protection of Society.

Use of Police Departments

At the present time, there is rather summary recourse to the information possessed by the police. Everything considered, certain conclusions may be drawn from reports prepared by the policeman in connection with the arrest of an accused or the investigation of a criminal act, but such reports seem to us to be incomplete or insufficient, notably in serious cases.

In cases of crimes with violence and recidivism, the Board or its representations should press their inquiries and research at the police level well beyond stereotyped and impersonal formulas.

Unfortunately, the few police officers responsible for accumulating information are overwhelmed by the weight of the task and are unable to meet all requirements.

The State should not hesitate to commit funds to the institution of police groups or services specially assigned to the preparation of dossiers of candidates for parole.

In serious cases, the Commission should not hesitate to hear the testimony of policemen having a special knowledge of the prisoner.

It would even be opportune on occasion to have policemen on committees assigned to the study of candidates' dossiers.

Finally, we hope for a better quality supervision or control when difficult cases are involved. At present, the persons assigned to this

work do not have all the time they need to properly achieve the reinstatement of the prisoner in Society. We are convinced that closer supervision of delinquents responsible for grave offences would have averted, in certain instances, recidivism or a return to a borderline life.

—IV—

Simultaneously with expressing the hope that the parole system will continue to improve, we would like to submit some suggestions designed, we trust, to benefit our Society.

1. That a method for the selection of prisoners be established without delay, in order to distinguish the most serious cases; in particular those who commit crimes of violence, and repeaters;

2. That those who commit crimes of violence be denied parole until they have served at least half of their sentence, when the conviction was the first for a criminal act of that type;

3. That in case of repetition of a crime of violence, the offender be no longer admissible to the benefits of the National Parole Act;

4. That a dossier in depth on the character and personality of the candidate for parole be prepared, especially in cases of grave criminal acts and recidivism;

5. That a portion of this dossier be prepared by the policemen concerned, or at the very least with their participation;

6. That the State commit all sums of money necessary for the setting up and maintenance of specialized services, within the police departments, for the preparation of editing of police reports, the collection of pertinent information from every policeman concerned, and the presentation of all information to the National Parole Board or its representatives;

7. That in all cases of crimes of violence and repeat offences, the said Board or its representatives hear the policemen responsible for the investigations and the dossiers relative to the criminal acts committed by these subjects;

8. That in these cases, the Board assure the presence of a policeman on committees charged with the study of the dossiers of this category of candidates;

9. That supervision of the subject responsible for serious criminal acts be intensified and improved during the course of parole;

10. That the police departments be used in a more precise manner in the supervision of such subjects;

11. That closer coordination be established between the parole system and the system of time off obtained under terms of the Penitentiaries Act;

12. That a specialized service be instituted to assure that the subject on parole will have work from the time of his release.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 12

THURSDAY, JUNE 22, 1972

Twelfth Proceedings on the examination of the parole system
in Canada

(Witnesses and Appendix—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue	Laird
Buckwold	Lang
Burchill	Langlois
Choquette	Lapointe
Croll	Macdonald
Eudes	*Martin
Everett	McGrand
Fergusson	McIlraith
*Flynn	Prowse
Fournier (<i>de Lanaudière</i>)	Quart
Goldenberg	Sullivan
Gouin	Thompson
Haig	Walker
Hastings	White
Hayden	Williams
	Yuzyk

*Ex Officio Members

30 Members (Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by
the Honourable Senator Croll:

That the Standing Senate Committee on Legal and
Constitutional Affairs be authorized to examine and report
upon all aspects of the parole system in Canada;

That the said Committee have power to engage the
services of such counsel, staff and technical advisers as may
be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized
by the Committee, may adjourn from place to place inside or
outside Canada for the purpose of carrying out the said
examination; and

That the papers and evidence received and taken on the
subject in the preceding session be referred to the Com-
mittee.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, June 22, 1972

(20)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Argue, Fergusson, Haig, Hastings, Laird, Lapointe, McGrand, Quart, White, Williams and Yuzyk. (12)

In attendance: Mr. Réal Jubinville, Executive Director (Examination of the parole system in Canada); Mr. Patrick Doherty, Special Research Assistant.

The Committee proceeded to the examination of the parole system in Canada.

The following witnesses, Inmates at the Drumheller Institution, were heard in explanation of the Committee's study of the parole system:

Mr. Geoffery Hewlett

Mr. Lloyd Lyding

Mr. Robert Royer

On Motion duly put it was Resolved to include in this day's proceedings the brief submitted by the Inmates of Drumheller Institution, entitled "A Brief on Behalf of the Inmates of Drumheller Institution including a Native Viewpoint". It is printed as an Appendix.

At 12.10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, June 22, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning three gentlemen from the medium security institution at Drumheller, who have presented us with two briefs. The gentleman sitting on my immediate right is Lloyd Lyding. Next to him is Robert Royer, and next to Mr. Royer is Geoffery Hewlett. Their names appear in the various briefs. Mr. Royer will probably deal with the brief on behalf of the native people. Am I correct in this?

Mr. Robert Royer: Yes, Mr. Chairman, that is correct.

The Chairman: He is also prepared to deal with it generally. You have the briefs in your hands. May we take them as read?

Hon. Senators: Agreed.

The Chairman: May I ask Mr. Lyding, first of all, if there is anything that he would like to say in the way of an opening statement.

Mr. Lloyd Lyding: Yes, Mr. Chairman.

Mr. Chairman and honourable senators, the length of our residency varies in many respects, depending on the results of the subject matter of your inquiry. Mr. Royer is a past vice-president of the Native Brotherhood, and Mr. Hewlett is the co-ordinator of the Drumheller Chapter of the Seven-Steps Society. Both these organizations are inmate self-help groups in active operation in our institution.

Our first comment must be one of appreciation to the Senate of Canada, and in particular to the Standing Senate Committee on Legal and Constitutional Affairs, for extending us the invitation to participate actively in your inquiry into all aspects of parole.

Our meeting this morning must be unique in that it represents the first time inmates have been given the opportunity of meeting face to face with legislators in a meaningful discussion of a matter closely affecting their lives and future. It is certainly a step forward, in the right direction. If there is one aspect of corrections that must be reformed it is the communication barrier existing between the various jurisdictions and between the inmate and society generally. Your inquiry will go a long way in breaking that barrier, and we are pleased to make a worth while contribution to your discussions.

We would also record our appreciation to the Solicitor General, the Honourable Jean-Pierre Goyer, to the Commissioner of Penitentiaries, Mr. Paul Faguy, and to the Director of Drumheller Institution, Mr. Pierre Jutras who has made our presence possible.

We would like to say thank you to two of your colleagues who have paid us the courtesy of a visit to Drumheller: to Senator Guy Williams, for spending two days with us and attending and participating in a recent Native Brotherhood workshop; and to Earl Hastings for his visits, which are too numerous to detail. Senator and Mrs. Hastings have been regular visitors to Drumheller Institution since its opening in 1967. The senator is practically a weekly visitor. He attends inmate meetings, worships with us, eats in our dining hall with us, talks to us in the privacy of our cells. In other words, he meets us in our environment.

Honourable senators, it is difficult, if not impossible, to articulate or explain the miracle and mystery of what happens when a man extends the hand of interest and assistance to another in less fortunate circumstances. We at Drumheller have seen this miracle, and lives have been changed as the result of the senator's extended hand. We publicly express our profound gratitude to him on behalf of the inmate population of Drumheller Institution. We suggest that his example is worthy of duplication, and we trust that in the course of your inquiry you will, perhaps by sub-committee, arrange to visit these institutions of Canada. There are many inmates anxious to participate, and such a visit would accord them the opportunity to do so. Our brief is the result of many weeks of work by the inmates. We canvassed the institution population for ideas and suggestions by way of questionnaire and discussion. We received excellent response with a wealth of information and, as you might suspect, complaints and criticism. In a series of meetings, with up to 15 men participating, we drafted the brief you have before you. In our opinion, it represents the majority view of the inmates of Drumheller—no doubt, shared by inmates generally in Canada.

The "Native Viewpoint" is the result of discussions, formal and otherwise, by the "Native Brotherhood and its leaders. We would like to mention Mr. Donald Yellowfly in particular, the president of the Brotherhood, who contributed greatly to this portion of the brief. We deeply regret that he is unable to be with us at this time.

It should also be mentioned that in the undertaking we received nothing but complete and unqualified co-operation, guidance and encouragement from the institution administration, for which we are very grateful.

Institution co-operation in any inmate self-help activity is the result of a deliberate policy established by our director, Mr. Pierre Jutras. The atmosphere at Drumheller is, as a result of this policy, one of understanding attitudes between the kept and the keeper, and contributes greatly to the resocialization of the offender.

We acknowledge our unequivocal confidence in Mr. George Street, Chairman of the National Parole Board, the members of the board, and members of the National Parole Service.

In the past few months much that is inaccurate or irrational has been said about Canada's parole system and its officers, no doubt based on a lack of knowledge of the board and its function. Great emphasis is placed on negative or alleged failures, overlooking the positive results. In our view, your investigation and report, carried out in the traditional non-political, non-partisan atmosphere of the Canadian Senate, will provide the public with an objective and factual view of parole and its mechanics. We are concerned with ministerial or political interference with parole procedure, or any changes that may be introduced in advance of your report.

Honourable senators, we have tried to be positive and objective in our approach to this important subject. If we appear to be negative or argumentative, we assure you that is not our purpose. We enthusiastically welcome your inquiry and we trust that we may be successful in further enlightening you with answers to your questions. Thank you very much.

The Chairman: Thank you very much, Mr. Lyding.

Honourable senators, we are now open to questions.

Senator Laird: Gentlemen, there is one thing that is very pertinent to parole, that I like to get off my mind first at these meetings. From your experience, what part have drugs played in the commission of the crimes for which the inmates are incarcerated? You can answer one at a time, if you like.

Mr. Lyding: Aside from those who are convicted of drug offences, I believe—and this is in contradiction to our Montreal friend yesterday—that there is very little involvement of drugs in the commission of crimes, other than those that are involved with drug crimes as such.

The Chairman: Certainly, in your experience at Drumheller.

Mr. Royer: Unless you include alcohol.

Senator Laird: I was coming to that next. Really, I suppose we should say that this includes alcohol—because this becomes very important in parole considerations. What about alcohol?

Mr. Royer: I would say that in my experience, especially with the Native people, alcohol is one of the major contributing factors to a man's coming into the institution. I think it deserves consideration.

Mr. Geoffrey Hewlett: I agree with Mr. Royer; and also apart from the Native viewpoint, I believe alcohol plays an important role in most of the petty thefts, the small crimes.

Senator Laird: Do you agree that in other than drug crimes themselves, drugs other than alcohol do not play too important a role in the commission of crime?

Mr. Hewlett: You do have the addict, naturally.

Senator Laird: Aside from the addict. I believe you were here yesterday and heard the evidence?

Mr. Hewlett: Yes.

Senator Laird: It has already been given and I direct this to the one witness, from his experience. How do you feel now?

Mr. Hewlett: In regard to drugs being involved in the crime?

Senator Laird: Yes.

Mr. Hewlett: I do not believe that was correct.

The Chairman: May I make this suggestion, that the witness yesterday was talking about Montreal. This witness is talking about western Canada.

Senator Laird: After all, Canada has got a few other spots besides Montreal!

The Chairman: Yes.

Senator McGrand: Just following up that question, you say that alcohol does contribute, especially in small crimes. A man gets tight and then he does something. But those people who carry out these big operations, where two or three people plan to rob a bank or something like that, that is a big undertaking that has to be done with precision, has it not? It takes only so many minutes to rob a bank. Do you think those fellows would be under the influence of drugs to prompt them? Would they not be aware that if they are under the influence of drugs or liquor they could not carry out that procedure as promptly or as efficiently as they would if they were sober? I would like to know that, because I have a feeling that there are people who perhaps, before they go to do a job of that kind, may take a drug, amphetamines or something like that, to give them pep. What is your opinion?

Mr. Hewlett: A man might take a stimulant, sir, but I would doubt very much whether a man would be under the influence of drugs when he was committing a crime.

The Chairman: Committing a serious crime.

Senator McGrand: He may need a stimulant. A football player takes a stimulant, too, sometimes, so that he can carry on.

The Chairman: Let us not get off the track.

Senator McGrand: No. I would like to know whether drugs do prompt people—or, not prompt them to carry out a bank robbery but whether they, in your opinion, are inclined to use them before they undertake the job. It may be I have not made it clear, but I hope I have.

The Chairman: Is there anyone here with any experience of bank robberies?

Mr. Hewlett: I cannot see where a drug would prompt the crime or play a major part in the crime itself.

Senator McGrand: I did not say prompt it, but to fortify the man who would be undertaking the job.

Mr. Hewlett: If you would include alcohol, yes.

Mr. Lyding: I would like to add to that. This is hearsay evidence, from the various bank robbers that I have talked to. Some say they have taken a couple of drinks to calm their nerves, because there is a lot of tension before they go in. I have heard that.

Senator Lapointe: In sex crimes, for example, are drugs involved a lot there?

Mr. Lyding: I do not know.

Senator Lapointe: You said that publicity was lacking for the successes of the parole grants. How would you imagine some publicity being given to those who would succeed when they are given parole?

Mr. Lyding: There are successful cases where the parolees have done a lot of work for themselves and have made a success of their lives. I think that publicity should be centered on this. You would not have to divulge his name; the names could be changed and we could centre more on that positive publicity instead of always hitting the failures in the newspapers. We talk so much about failures and it gives a very negative aspect to the parole system.

Senator Lapointe: Would the parolees consent to having this publicity, would you think?

Mr. Lyding: I think so.

Senator Lapointe: If the name was concealed?

Mr. Lyding: Yes.

Senator Quart: How could we do this? If the mass media want to put in something, they want to make it sound very dramatic. We have the failures as well as the successes. How would you suggest we can make them interesting?

Mr. Hewlett: There have been some very dramatic successes, too. We have known cases of men who have been out of prison for 15 or 20 years and who are coming back to Indians to help teach them and help others. These have been tremendous successes and it helps; and there may be hundreds of other such men, too.

Senator Quart: How do you suggest giving this publicity? How can we make the press feel that this is important, even though we are sold on it?

Mr. Lyding: I think just by feeding them the information; I think they would publish it.

Senator Quart: One might try.

Senator Lapointe: Having been a journalist myself, I think that those who are specialized in social welfare should go in there, make

inquiries about the successes more than the failures, and give them very good coverage.

The Chairman: This is a problem with the editorial directors of the papers, I would think.

Senator Lapointe: Yes, usually.

Senator Fergusson: I am very interested about the files being open to the people who are applying for parole. On page 7 of your brief, you say:

Inmates files should be open to the inmate as it is imperative that he should know the impressions of others.

If the file is negative, would not that discourage him?

Mr. Hewlett: We believe a man should be aware of some of his shortcomings. Quite often we do not know ourselves as other people see us. There are a lot of reports in there from very qualified people who have had a chance to sit down and look at us, judges who look deeply into our problems. And if we are not aware of what those problems are—perhaps there is some quirk of our nature which they could explain to us, so that we can pick up on it and perhaps do something about it. When everything is closed to us—and maybe it can affect our future, our freedom or perhaps our future return to crime—the secret is contained within these files, and we should know about it and then we could discuss it intelligently.

Senator Laird: Would you make an exception in psychiatric cases? It seems to me that a pure psychiatric case, or even a possible psychiatric case, should scarcely have access to his own file because to do so might not do his position any good.

Mr. Royer: I think there are circumstances where it would be better not to show the applicant his file.

Senator Laird: You see, the other day we passed the omnibus Criminal Code amending bill, and among the provisions was one to make it unnecessary for the accused in a murder case, who has pleaded mental incompetence through his lawyer, to be present when the evidence is being given because it is unfair to him and is, in fact, a ridiculous situation.

The Chairman: And could possibly prevent his eventual cure.

Senator Laird: Yes, and I went so far as to cite a case of my own where a boy who killed his mother had to stay in the court and listen to evidence being given about his own insanity.

Mr. Hewlett: Well, senator, there are many other reports in these files too, apart from psychiatric reports. There are observation reports, for instance, and some of these might be contradictory and the man should be allowed to discuss them.

Senator Laird: I see. You think that there might be some indication by one expert that he had some psychiatric problems while another expert might say that he does not have problems, and so he should have access to that.

Senator Fergusson: On the whole you would prefer, as a general rule, that they should have access?

Mr. Royer: I can cite you an example to illustrate what we are talking about. A man comes into an institution and he serves perhaps up to one-third of his sentence before he becomes eligible for parole, and then he appears before the Parole Board. Now, they may say, "Well, you are inadequate in certain areas of your character and you have not dealt with certain problems," and if he does not know how other people are thinking of him or how they see him, then he does not really have any basis upon which to start correcting these things.

Senator Quart: In the opinion of the inmates of Drumheller, do you find that the panel from the Parole Board going to the institution to interview the applicants for parole is a good thing? Do you think it is a good thing for them to go there?

Mr. Hewlett: We think it is very important and we would like to see more of it. We would like to see further interviews following a man right through his sentence.

Senator Quart: When they interview an applicant for parole and they decide not to grant parole, is any reason given as to why they have decided this way? Or do they simply say, "Sorry, the parole cannot be granted," and just put it into your file?

Mr. Royer: I am afraid that is generally true, but the thing is that it is not done in all cases. Sometimes a man is left hanging there for months and he does not know why he was turned down on his application for parole.

The Chairman: You have a portion here in your brief dealing with the turning down of an application without any reason being given because the reason is privileged.

Mr. Hewlett: Because of privileged information.

The Chairman: Would you like to talk about that at this time?

Mr. Royer: Yes, we think that is very important. We did cite a case here where a man applies for parole and appears in front of the Parole Board. In the preliminary investigation of his application for parole the parole service has found out that the man's wife, for example, did not want him home—perhaps she is living with another man—and this would be considered privileged information in some cases, and the applicant for parole would be denied parole on the basis of the situation. We feel that if a man is ready for parole, then this privileged information should not apply. If a man were in a good, sound psychological state of mind, then probably if he did find out about these things he would be able to make alternative plans and perhaps even go to another city. But I do not think the man should be denied parole purely on the grounds of circumstances of this nature which are considered as privileged information.

Senator Lapointe: If the wife wants the parole to be delayed, I am sure she does not give the real reason, that she is living with another man.

Mr. Royer: Well, I believe the parole service makes a fairly intensive investigation and they generally come up with these answers.

Mr. Lyding: If I may interject here, if the man has made his plan centering it around going back to his wife, and if the wife has been writing to him—and this happens quite frequently—telling him that she wants him home, while at the same time telling another story to the parole officer, and the man has all his plans centered around going home and picking up with his family again—I think in cases like that, when the officers of the Parole Board have completed their investigation and find out the real situation, they should inform the man that his plan would not work and tell him why. Then they can ask him to make another plan; they can observe him for a couple of weeks to see how he is taking this; and they can explain to him that if he can stand up to this emotionally, then there is no reason to keep him in jail.

Senator Lapointe: So then, you prefer that he should know the truth?

Mr. Lyding: Yes.

Mr. Hewlett: We believe that most men can handle this type of situation.

Senator Lapointe: Do you think there are many cases where the inmate is very sad and curious about that and, in consequence, may commit another crime like going home and killing his wife? Can this happen?

Mr. Royer: I would say that if at the time of the assessment the man is found to be in a good, sound psychological state of mind—I am speaking now of when the application is heard—then I would see that perhaps this would possibly shake him.

The Chairman: Particularly if it gives a little time for adjustment.

Senator Quart: Maybe the panel in delaying the parole to that man would in a sense be protecting him from committing some other act in another fit of rage.

Mr. Lyding: When you say "delay," perhaps it is a couple of weeks or a month, but in some cases it has meant more than that; it may be several months. Perhaps the man does not even get parole.

Senator Lapointe: Have you heard that some inmates have been granted parole without asking for it, as we heard yesterday?

Mr. Royer: Never.

Mr. Lyding: No.

Mr. Hewlett: It would be a pleasant surprise.

The Chairman: Except for mandatory supervision, which is another problem.

Mr. Royer: I think perhaps there was some misinformation related to you on that subject yesterday. First of all, a man has to make application for parole. There is a series of interviews carried out with the man by the parole service and his classification officer within the institution. If the man did not want parole, certainly his application would be dealt with in a proper manner. There is not any possible way that I can see that they would release a man who did not want to be released on parole. I have never seen anything of that nature.

Senator Hastings: I understand that the application for parole and the waiting for parole have a traumatic and psychological effect. I realize it would be hard to convey those feelings, but, to the best of your ability, could you explain what a man goes through during that period when he is waiting for his parole or for the decision?

Mr. Lyding: There seems to be a period during which a man's hopes are high that he is going to get his parole, and in that period he will do what we call a "hard time". He is counting on getting out, so there is a great deal of anxiety that you can notice in the man. It is like waiting for the most important word in your life, and you are waiting and you are doing the waiting day by day. That can cause a man to get quite irritable. It can cause a great deal of anxiety, as I have said. Perhaps you can add to that, Bob. You have had parole.

Mr. Royer: Yes. I would have to agree with you, Lloyd. Going further than that, I think one has to appreciate the atmosphere and the circumstances within the institutions. Some things that seem to have no relative importance can become blown right out of proportion, because in that type of low stimulus environment any little issues can become major traumatic issues in the minds of most inmates.

When we are thinking in terms of parole, the atmosphere in the institution prior to or up to the last month before a board comes is such that the emotional tension just becomes very intense within the institution.

Mr. Hewlett: Parole is the only thing that is on the man's mind for five or six months. You think of it day and night for five or six months, until the actual time you appear before the board and have your interview. As is happening now in our area, in approximately 50 per cent of the cases they are giving you a reserve decision on top of that, which, in other words, makes you wait for another couple of months while they scrutinize more files and conduct more interviews.

Senator Lapointe: What is the average period of waiting? Is it three months or six months or one year, or what?

Mr. Royer: It depends on the case, senator. Sometimes parole is granted in principle, and a man may wait a month or a month and a half; but sometimes the man's case has to be taken back for consideration by a five-member board and the decision is given here in Ottawa, and in those cases it can well be a matter of months.

Senator Lapointe: When the Parole Board is examining candidates for parole in your institution, do they conduct many or only a few interviews each day, and do they stay for many days?

Mr. Royer: Well, to give you an example, on the last board they interviewed 46 applicants in three days.

Mr. Lyding: They work for ten or twelve hours a day sometimes when they are interviewing.

Mr. Royer: They go right into the evenings in most cases.

Senator Lapointe: Do they work those long hours interviewing one inmate?

Mr. Lyding: Oh, no, that is for the total load, for whatever number of applicants the board is going to see.

Senator Lapointe: Do you think this is too many interviews for such a short time?

Mr. Lyding: Yes, we think it is. That is one of our complaints. We think there should be more staff on the national parole service.

Senator Lapointe: Because they might be very tired, too, and confused with all these cases.

Mr. Hewlett: And, of course, it shortens the amount of time they can spend with each individual case.

Senator Fergusson: Does this build-up of tension while waiting for parole applications to be heard ever lead to nervous breakdowns?

Mr. Royer: Oh, yes, I have seen cases where they have had to contain a man in the maximum security cells because of that pressure.

Senator Hastings: It is really impossible to convey the feeling that must go through the man, the pressure he is under. You have said that the board do not give decisions, but I think they do give decisions sometimes. I think of one particular case where the applicant said the board said "no" seven times before he heard the "no".

Mr. Lyding: Did they say the word "no"?

Senator Hastings: They said the word "no". He admitted it to me. He was just not ready for that "no", and he just turned it off.

Mr. Hewlett: Quite often it happens, though, that in their manner of turning a man down they are trying to explain it to him and ease it to him gently. You know, these are men with university education and, well, they are talking to a man with grade five or six education, and he is waiting for a "yes" or a "no", and the reasons why. It might just go entirely over his head.

Mr. Royer: There are also cases where a man has a deferral of perhaps six months or a year, or whatever the case might be, and sometimes the reasons for the deferral are just not stated to the man.

Senator Hastings: Or are stated vaguely.

Mr. Royer: Or vaguely, yes.

Senator Yuzyk: How does the application for parole affect the relations of the applicant, the person going before the Parole Board, with the other inmates of the institution prior to the arrival of the board and, if he is turned down, subsequent to the arrival of the board? I know that is a broad question, but I am curious about the atmosphere within the institution and the relationship of such a person with the other inmates.

Mr. Royer: Do you mean what the man's reactions are, for instance?

Senator Yuzyk: No, rather the attitude of the other inmates towards him prior to the time and subsequent. Do they discuss matters, for instance?

Mr. Royer: Oh, yes. It is the only source of conversation for at least a month and a half before the board actually sits, and you can walk almost anywhere within the institution and catch that type of conversation.

Senator Yuzyk: Are most of the other inmates sympathetic to such a person or is there jealousy?

Mr. Royer: I think there is a lot of patience shown in most cases. A man talks about his chances—you know, his case. It is playing on his mind, so naturally he communicates his anxiety amongst the other inmates of the institution. I think that for the most part the rest of the inmates are quite familiar with the situation.

Senator Yuzyk: Do they try to encourage him in any way, if he thinks he is going to be turned down, for instance?

Mr. Royer: Oh, yes. Yes, there is a great deal of this done within the institution.

Senator Yuzyk: Is there some faith in the Parole Board?

Mr. Royer: Yes, I think so; I would say so.

Senator Lapointe: If a person has been turned down by the Parole Board, do they tease him or laugh at him?

Mr. Royer: Generally, I would say no.

The Chairman: They are not giving him a bad time because he was turned down?

Mr. Royer: No.

Mr. Lyding: You usually find that groups of inmates get together and advise one another as to how to conduct themselves before the Parole Board. There are a lot of excellent counsellors. Sometimes there is jealousy because one man gets parole and another is turned down, and the one who is turned down says "So-and-so got parole and look at his record. I have a better record than him and I did not receive parole."

I would like to return to Senator Hasting's question. I believe a man is usually aware of why he is turned down. In the case you have mentioned, I am familiar with this case and the man has been told the reasons several times but he was not prepared to accept "no" for an answer. He continued to think "yes, yes." It took a long time to sink in because he was not listening. This happens frequently. His hopes are built up and he has the word of the travelling members of the Parole Board on his mind, and when these words do not correspond with what he is personally thinking he does not hear them.

Senator Lapointe: Is homosexuality as common as we hear about in penitentiaries? Is there some form of blackmail?

Mr. Lyding: What have you heard?

Senator Lapointe: I hear it is quite high, and that it is not a good thing to keep all of these men together.

Mr. Royer: I would say that in the medium and minimum security institutions homosexuality is practically non-existent. However, in the maximum security institutions the atmosphere of homosexuality is above and beyond deplorable.

Senator Hastings: Would this be the result of the relaxed atmosphere in the other institutions, the temporary absences, and the procedure whereby an inmate can stay close to society? These privileges are not granted in maximum security.

Mr. Royer: Oh yes, certainly. This is exactly the reason for it.

Senator Laird: There is another problem allied to what we are dealing with concerning the family conditions of a parolee. Is it not a fact that in addition to the problem of family conditions, another major factor involved in the success of parole is the ability of a person upon his release to obtain employment? Have any of you had experience with this problem or do you know of others who have had difficulty obtaining employment?

Mr. Royer: I would like to go on record as saying that if the man is a good candidate for parole, and is in the right state of mind, the question of employment does not even arise. If a man is ready for parole he can go into the community and the question of employment will not be that important. This has been my experience in any event.

The Chairman: He will find a job?

Mr. Royer: A man will find a job.

Senator Laird: That is a very interesting observation, because up to this point the evidence has shown that this is a grave problem, because the person has a record. You have indicated that if he does not become discouraged and continues to look for employment, he will find it.

Mr. Royer: I would say so.

Senator Lapointe: Is every employer inquiring as to whether or not you have a police record before he hires you?

Mr. Royer: Oh, no.

Mr. Lyding: It varies; some employers ask and some do not.

Senator Lapointe: Are the larger companies, as opposed to the smaller companies, asking?

Mr. Royer: I think it varies. Some employers are open-minded and are prepared to give a person a chance; and some are very narrow-minded and are not prepared to offer employment to ex-inmates.

Senator Haig: Mr. Chairman, on page 7 of the brief there are recommendations for parole. What is the Seven-Steps program?

Mr. Hewlett: Seven-Steps is a society formed strictly by the inmates. They work together on the group therapy principle and without any administrative influence. It was begun in the United States in 1967 by the late Bill Sands in the San Quentin Prison. It is now in Canada. The inmates get together and discuss their mutual problems and concerns. Again, it is a matter of communication. No one can relate to an inmate better than another inmate.

Senator Haig: Does the administration take part in this program?

Mr. Hewlett: Sometimes they observe, and they are welcome to do so.

The Chairman: Do they encourage it?

Mr. Hewlett: Yes.

Senator Haig: What is X-Kalay?

Mr. Hewlett: I am not all that familiar with X-Kalay. It began in Vancouver, I believe, for native inmates who were released, and for dope addicts. It now includes all kinds of inmates. They run their own half-way house and business.

Senator Haig: This is an outside organization?

Mr. Hewlett: This is an outside organization.

Senator Haig: And the Seven-Steps program is an inside organization?

Mr. Hewlett: It is both inside and outside. Upon your release you return and help other inmates.

Senator Hastings: Dealing with that recommendation, when Mr. Street appeared before this committee he indicated that the board was anxious to receive information at any time and from anyone. I think Mr. Street would welcome any input which you have. However, I would like to ask whether you would make a negative recommendation?

Mr. Hewlett: Oh yes, certainly.

Mr. Royer: Certainly; I think there are a number of ex-inmates who can be as subjective, rational and intelligent as any member of the National Parole Board.

The Chairman: You have begun a new living unit concept in Drumheller, have you not?

Mr. Royer: No sir, not yet.

The Chairman: Are they going to begin this program?

Mr. Royer: Yes sir, it should begin this fall.

The Chairman: Can you inform the committee what this involves? Have you been briefed on this matter?

Mr. Royer: No, we have not had a formal brief. Anything I would say on this subject would be purely speculative.

The Chairman: My understanding is that they will break the inmates into little groups of 12 or 14—I am not sure of the figure. These groups become, in effect, a family unit which lives together. A guard is responsible for a group and is always with the same group. You have a continuing group therapy process. If you had something like this and you also had a representative of the parole service present, would you think such a group could make useful recommendations as to when a person is ready for parole?

Mr. Royer: Certainly.

Mr. Hewlett: Who knows a man better than someone who lives with him 24 hours a day?

The Chairman: Do you wish to speak about that a little for the committee? We would sooner hear what you have to say.

Mr. Hewlett: There are the Native Brotherhood, AA, Seven-Steps, X-Kalay, living with the men, working with the men, sleeping with the men. They are all together. You see him in all conditions, under all circumstances and all frames of mind. You know him and know him well. If it is a responsible group, you are going to give him the recommendation that he has earned.

The Chairman: If you release a fellow who should not be let out, you know who pays.

Mr. Hewlett: We would hope to achieve through these groups that the man would not apply for release until he was ready. You would all know at what time he was ready, then apply.

The Chairman: And his pals would not let him.

Mr. Hewlett: I do not think they would try to stop him. He would have his own understanding and know himself when he was ready to go.

Senator Lapointe: Would you favour the appointment of a former inmate to the Parole Board?

Mr. Royer: I would not only recommend it; I think it is absolutely necessary. Perhaps I can elaborate on the reasons for that. Generally, what we have is that most of the correctional personnel, which involves the parole service, come from the typically middle-class or perhaps lower middle-class background. They have no experience with the life style of the subject that they are dealing with. Therefore, there is always a communication gap and it is referred to in terms of "we" and "they"—an "opposed united front," you know. It is very difficult to relate to a man and start the process of communication if you do not have that experience and life-style background.

What parole officer classification officer within the system has ever had the personal experience of broken homes, juvenile detention homes or orphanages? Have they ever been down to the skid rows and lived in those cockroach-infested hotels, seen the prostitution, gambling and all the ills that poverty breeds? There is even a language barrier, due to a particular type of culture that has been developed because of these conditions. You must have an intimate knowledge of this culture in order to deal effectively with it. So I would say, without any hesitation whatsoever, that it is absolutely necessary.

Senator Lapointe: In the west, for example, where there are many more people of Indian descent, or Métis, would you favour the appointment of an Indian or a Métis to the Parole Board?

Mr. Royer: Absolutely, and preferably an ex-inmate Métis appointed to the Parole Board. I think it would do wonders for the native people to be able to communicate with this type of person.

The Chairman: We have been told that there are such appointees now. Have you had any experience?

Mr. Royer: In the parole service?

The Chairman: Yes?

Mr. Royer: No, I have not.

The Chairman: Ex-inmates and native ex-inmates in the parole service?

Mr. Royer: Not in my experience.

The Chairman: You have not run into any?

Senator Hastings: I wonder if the boys would take time to explain their "Earn Your Freedom Plan" and, in particular, tell me if I am not correct in thinking that that is the way the game is played now? You enter a penitentiary, are classified and moved to a certain security. You undergo your treatment and training, appear before the Parole Board and, if you have made progress, are processed out into society. I would like you to tell me the difference between what you advocate and what is actually in practice. Is that not the way it is played?

Mr. Lyding: What is in practice is that a man comes in now, through the reception centre. He will be interviewed by the

classification officer and may ask to work outside, on an ornamental crew. Maybe he just wants to go for a month or so before deciding where he really wants to settle down. He might end up getting into the kitchen. They may just place him in the kitchen. They will send a man where he wants to go, but it is not just done as a rule. In some cases a man will get his choice; in other cases he will not. I do not think there is any goal outlined at the present. They do not really try to map out a goal for him and in prison there is this lethargy, this lack of motivation which seems to be a very big problem.

This is where we have discussed this "Earn Your Freedom Plan," to provide an incentive, which would be a reduced sentence based on accomplishment and participation. It is hoped that the man will gain some self-respect. This is the crux; a man comes in, he is a failure, he has been a loser for a long time. Many do not know what success is, so they think negatively. They think in terms of failure and have very little or no self-respect. I think the crux is to build up some self-respect, some sense of accomplishment and positive thinking. Once you can do this, the man will develop some pride in himself and give a better image.

I think that this is really for the protection of society. This is what can really last, if you can develop this in the man. The "Earn Your Freedom Plan" can help in achieving this development of self-respect.

In my own situation and in the cases of some of my friends, we are starting to take correspondence courses. There is a certain feeling of satisfaction that comes from accomplishing even a little thing like a course. Many men who come in are afraid of taking a course because they are afraid of failure. They are actually afraid of starting the course because it may be another failure, so they do not want to start it.

So I think that if the incentive is put there—call it a reward, or this type of "Earn Your Freedom Plan"—it will help the man to achieve some self-respect and pride. This is what is needed.

The Chairman: We shall now take a short recess.

A short recess.

The Chairman: Prior to the recess, Senator Hastings had asked a question about the "Earn Your Freedom Plan." Mr. Lyding was in the course of answering the question, and we received part of the answer.

Senator Hastings: We should not overlook the fact that we have two briefs. I wondered whether we were going to set aside a time limit . . .

The Chairman: Let us say that we go ahead for the next ten minutes on this and then, not later than 11.30 a.m., we will switch to the Brotherhood brief. Is that agreeable?

Hon. Senators: Agreed.

Senator Hastings: It is my opinion—and I would like each one of you to comment on it—that practically every man who arrives in our institutions—I would say nine out of 10—knows he has a problem,

knows that he has to learn discipline, but that what they resent and despise with passion is the method of discipline used in the service.

The Chairman: That is a good leading question, but I will let it go.

Mr. Lyding: I agree with you, senator. I think that most would acknowledge they have a problem. Many have not decided to do anything about it. That is the key thing right there. A man first has to decide to do something about it. The way the system is right now, they resent the authority inside. They resent the work programs. They seem to be useless. It is the lack of self-respect, the lack of a program that would provide that needed pride and self-respect. That program is not in existence.

The Chairman: In other words, you are breaking a man down and are not building him up, under the system at the present time?

Senator Hastings: Why is Drumheller different?

Senator Haig: Because you have visited it!

Senator Hastings: I think it is important. What is different in the circumstances at Drumheller than at other institutions?

Mr. Lyding: One of the biggest differences is the administration. In particular, I mentioned our director, Mr. Pierre Jutras. He is very progressive. He encourages men to improve themselves. He comes right into the institution and talks to them personally. Groups are invited in. He extends the day pass. He has really broadened this program and made good use of it. There are also working passes. I would say that these are some of the factors why it is different.

Mr. Royer: I agree with what Lloyd has said about the attitude of the director at the Drumheller institution. He is willing to listen to ideas, and we think we have many constructive ideas. We talk about the correctional process, but we seem to be going about the problem entirely backwards. For instance, you have built multi-million-dollar institutions with all kinds of elaborate tools for men to learn trades, vocational shops, and things of this nature. But we feel that you have not put enough emphasis on the individual, on the human value of the individual.

From our experience within the Native Brotherhood, from experimenting, and from trial and error in many cases over a number of years, we have been able to come up with at least a partial solution. I think that these self-help groups might be a very valuable therapeutic tool for rehabilitation if they were used. I would like to give an example. I am speaking about a native who has perhaps a grade 3 to grade 5 education and who has been the subject of inadequacy all his life; he has nothing to look back on but a past record of failures. So his own evaluation of himself is that "I am less than." I have heard so many native people say, "Well, I am just a native." They do not equate themselves with being able to do anything of a constructive nature.

So, for example, we have little programs which may seem elementary to most people. As I have mentioned in the brief, we have things like public speaking. We say to the man, "We are going

to teach you how to speak in public." I have seen men get up to the lectern, as I said, with this background and this limited education, and I have felt empathy for the man in that situation, because in a lot of cases he could not even say his own name without stumbling and becoming embarrassed.

So we have taken the time to work with the person. We have taken tape recorders into the cells. We have taken the time and effort to help a man practise and learn, and we have prepared speeches for him, for example.

Senator Yuzyk: Whom do you mean by "we"?

Mr. Royer: I mean as an organization.

Senator Yuzyk: Do you mean a small group that works on this problem constantly within the prison and approaches the individual inmate, is that it, when they think he is ready to start on a new way of life, so to speak? You say he has been broken down and has no confidence in himself.

Mr. Royer: More than that. Even if he is not willing. We are bounded by group participation. If your peers are all doing a particular thing, are involved in a particular thing, even if you at first do not want to go along with it, you will. We have found that this has been effective. We use all kinds of incentives.

Senator Yuzyk: This is what you call group therapy?

Mr. Royer: In a sense, yes. Going on with what I was saying, the same man one year later is a public speaker, and very, very adequate in this field. It has done something for the man. It has done something for him inside. He has a few things that he can look back on, a few successes. He starts to become proud of himself. This is transmitted to the rest of the institution. He starts getting involved. He starts taking a trade, because he starts believing that he can actually do these things, that he can reach equality with other people. This is particularly important for the native people, because they have the general feeling of "less than".

Senator Yuzyk: Such a person receives encouragement from, say, your group, or do you have among yourselves certain people whom you get involved in, and you pay particular attention to that person until he becomes part of your group—is that it?

Mr. Royer: That is correct. We have an organization that is broken down into an executive body. It is further broken down into specific jobs, like, for instance, cultural director, director of public relations. We teach these people how to be responsible to the organization. We have so many valuable things to offer. As I said, from my own experience—and I have had lots of experience; approximately eight years solid in these places at various times—this is the only thing that I have seen that works, because it is a life-skill program. In order for a person to take advantage of all that society and the institution has to offer in the way of vocational and educational opportunities, you must give him a source of motivation, a feeling of pride in himself, of believing that he can accomplish these things. We need programs that are orientated towards the individual. We must go about it in that manner.

Senator Yuzyk: Eventually you get some of them to go into these super-workshops that are empty, as you say, at times; you get them involved that way?

Mr. Royer: That is right.

Senator Yuzyk: And he then becomes a leader, or may become a leader, and tries to get others. Do you try to get all the inmates in a particular section or wing, or whatever you call it, involved in that way?

Mr. Royer: Yes, we do.

Senator Yuzyk: And do you have meetings with all the inmates?

Mr. Royer: Yes. I should mention that this is all done in our spare time, and it is in addition to participating in the program of the institution, which I should like to go on record as saying is ineffective; it is just not working. If you walk through a penitentiary and see the lack of motivation on the part of the inmate population it becomes evident that it is not working.

Senator Yuzyk: How much co-operation do you get from the administration?

Mr. Royer: In the case of Drumheller Institution we have an open-minded and somewhat progressive director who is willing to experiment and to help us find the means of being more effective in the area of rehabilitation; and, of course, we get to participate in our own rehabilitation. However, he is limited by a certain set of directives in that he can only work within the boundaries of those directives. We feel this should be changed. We are looking for effective ways to keep men out of prison. If we are not being successful—and the statistics show that men are returning to prisons—then perhaps it is time we did experiment in these areas in order to find some viable solution to this problem.

Senator Lapointe: How old is the director?

Senator Hastings: He is 63 years old.

Senator McGrand: Is Drumheller the only institution you have served in?

Mr. Royer: No, senator; I have served in the maximum security penitentiary at Prince Albert.

Senator McGrand: And did you find the conditions much different at Prince Albert from those at Drumheller?

Mr. Royer: That is an understatement.

Senator Hastings: What you are saying is that we need more people like Pierre Justras and not more Drumhellers.

The Chairman: Not more Prince Alberts.

Senator Hastings: Yes.

Mr. Royer: That is absolutely correct, senator. We need more progressive people in the correctional institutions.

The Chairman: In other words, the director of Drumheller encourages the inmates to experiment? He says: "Try it and see if it works; if it does not work, then we will change it." Is that correct?

Mr. Royer: That is correct. I could cite you examples of men who took part in this program when they were in the institution and who, since leaving the institution, are doing absolutely unbelievable work in society. I think of such people as the President of the Native Friendship Centres, for example, and I could go on and on. I will not cite names; I do not think I can, but we have found something that is, at least, partially working.

Senator Yuzyk: How long has this plan been in operation?

Mr. Royer: Unfortunately, senator, not very long. I believe it is two or three years, at the most.

Senator Yuzyk: So it is a relatively new program?

Mr. Royer: Yes.

Senator Yuzyk: However, it has gone beyond the experimental stage in that you say it has proven itself to be effective.

Mr. Royer: Yes.

Senator Yuzyk: Do you think that this program should be passed on to other institutions throughout the country?

Mr. Royer: Absolutely.

Senator Yuzyk: And how could that be done?

Mr. Royer: As Senator Hastings has pointed out, senator, we need more people like Pierre Justras.

Senator Lapointe: What is his background? Where does he come from?

Senator Yuzyk: He is a Manitoban, I believe.

Senator Hastings: He was born in St. Boniface. He has been with the Canadian Penitentiary Service for approximately 35 years. He was an accountant at Saskatchewan Penitentiary and then he came to Drumheller as director in 1967.

Mr. Hewlett: What is unbelievable is that he is an old-time penitentiary official who has changed.

The Chairman: Very well put.

Senator Yuzyk: So there is even hope for them.

Senator Hastings: I wonder if you could outline for the committee, Mr. Hewlett, the Seven-Steps Society?

Mr. Hewlett: I really cannot add anything to what has already been said. Our society is slightly different from the Native Brotherhood society in that we do restrict our membership. We try to keep it to a small group because we found that with a larger group you experience a branching off into small factions or cliques. We endeavour to keep the membership to less than twelve, usually eight or nine. The purpose is to discuss our mutual problems. We have found, through our discussions, that every one of us shares very much the same type of problems. We have also found that the truth does come out. There is no way you can sit in a room with twelve other outstanding thieves and tell anyone a lie and have them believe it. The truth does come out and, of course, the first thing required to keep a man out of prison is that he recognize the truth and face it. Actually, recognizing it, I think, is easier because everyone keeps telling you that you are a failure; but to be able to take a good hard look at it and apply it to yourself is the important thing, and this is what we encourage each other to do. We have no leader, no direction. We have constructive discussions and we get a lot of our problems together, so to speak. If a certain set of circumstances comes up we usually find that two or three other members of the group have already encountered the same or similar circumstances and have overcome them—not always the right way, but at least we know the wrong way.

Senator McGrand: Do you have visitors from the public in general who come to see the institution and talk with the prisoners at all?

Mr. Hewlett: Yes. In fact, our particular group encourages ex-inmates who are making it on the street to visit the institution and talk with prisoners.

Senator Fergusson: And do they come?

Mr. Hewlett: Some of them come, yes.

Senator Fergusson: Does the John Howard Society or any of these societies put on programs for the inmates?

Mr. Hewlett: The John Howard Society normally keeps active in groups that are within the institution.

Senator Fergusson: Yes, I realize they do a lot of good like that, but I am wondering if they provide entertainment or anything like that for the inmates.

Mr. Hewlett: The John Howard Society does, to my knowledge.

Senator Fergusson: And do any of the other like organizations?

Mr. Hewlett: Well, again I can only speak of Drumheller.

Senator Fergusson: Yes, I realize that. I myself have gone to some institutions to play bingo with the inmates. Do you have that type of thing?

Mr. Hewlett: Yes. For example, we have a bridge club within our institution which is made up of inmates and people from the outside.

Senator Fergusson: That is what I am referring to.

Mr. Royer: By way of information, I should like to add to that—I think it is important—that these organizations make a special effort to invite and utilize all the various existing existing agencies at the present time. I think it is very valuable that this continue. We make an effort to invite members of the parole service to our meetings and get them involved. We have also invited members of the RCMP to the Drumheller institution. We have invited the various shop instructors to participate in our meetings and, as well, Senator Guy Williams who is actively involved in some of our activities. I think it is important that this type of thing continue.

Senator Hastings: Could one of you outline the Canadian Brotherhood?

Mr. Hewlett: I can give you a brief outline. The Canadian Brotherhood was originally started because of the almost even balance we have in our penitentiaries as between native and white inmates. We could see that they were separating, and in an attempt to keep them together, to work together and participate in outside interests together, the Canadian Brotherhood was formed.

Mr. Royer: Further to that, I should like to say that at the present time—I think I am correct in saying this—a lot of the staff view these organizations, perhaps, as a social function. I do not think they have yet recognized, as I mentioned before, the valuable therapeutic effect they can have in aiding rehabilitation. I feel that this is because our activities along this line are confined to our leisure hours. What I should like to see is these programs implemented as an integral part of the correctional process, recognized and encouraged.

Senator Quart: Do you have a theatre group or choral society, or anything of that nature, with which you could put together shows to which you could invite the public?

Mr. Royer: Yes, we do. We have had a type of theatre group. We have had all kinds of activities that involved community participation.

Mr. Lyding: A brass band.

Senator Hastings: Tell them about the cabaret.

Mr. Royer: The cabaret was sponsored by the Canadian Brotherhood downtown. They rented a hall in the city of Drumheller and held a dance. It was somewhat unique. The inmates were the waiters serving drinks. It was a fantastic success.

Senator Laird: It was on TV.

Mr. Boyer: Yes.

Senator Lapointe: Do you think that some inmates are happier inside than out in real life?

Mr. Royer: No, I do not think so. I should like to explain that. I would say that for a man doing time in, for instance, a maximum

security institution, where there is no communication with the outside whatsoever, it being a closed workshop type of environment, perhaps you are right. Over a number of years, if a man achieves his recognition from within the walls, confines, atmosphere and culture of that particular environment, eventually he will arrive at the condition you are speaking of. I would say it is a normal adjustment to an abnormal circumstance.

Senator Lapointe: Because they do not have to earn their living; they have lots of entertainment, as you say.

Mr. Royer: In the maximum security institutions that I was talking about there is very little of this.

Senator Lapointe: You mean no one likes to remain in the other institutions?

Mr. Royer: Right. How can you possibly hope to teach a man to live in society within an institution, within that environment?

Senator Hastings: You have all served time in maximum security, in Westminster. What percentage of those men need maximum security or could function within a medium security institution, in your opinion?

Mr. Royer: I would say perhaps 20 per cent would require maximum security; the other 80 per cent do not require maximum security conditions.

The Chairman: And would benefit.

Senator Haig: Who decides when a person moves from maximum to medium?

Mr. Royer: Right now I think the count in the institution decides. There is a maximum overload in prisons all over western Canada.

Senator Haig: And eastern Canada too.

Mr. Royer: I am only familiar with western Canada. As I said, and as we have stated in the brief, there is a 73 per cent recidivism rate. If that was applied to the school system, what would people say of a failure rate that high? It is just that the right approaches have not been used for dealing with this problem.

The Chairman: Whatever it is we think we are doing, we are not getting the results we thought we were.

Mr. Royer: Right. You see, you have never come to us and asked us, and we are the people involved.

The Chairman: We have now.

Mr. Royer: You have now, and we sure appreciate it, but you never have in the past. You have never come to us and asked us, and we are the people involved; we are the people with experience.

Mr. Hewlitt: If I may elaborate on something Bob said, he said that 80 per cent do not belong in a maximum security prison. Out of those perhaps half do not belong in prison.

Mr. Royer: I think Mr. Street has made the same statement many times in the past.

Senator Hastings: How knowledgeable are the inmates as to the purpose and objective of parole?

The Chairman: Or what do the inmates think parole is? Let us put it simply.

Senator Hastings: What do you regard parole as? What is the general opinion of the inmates?

Mr. Royer: Unfortunately, due to inadequate means of communication, a vehicle of communication, most inmates see parole as a way out, you see.

The Chairman: As a mitigation of sentence?

Mr. Royer: As a mitigation of sentence, right. They have not really realized what parole involves. Primarily the Parole Board is looking for one thing, and that is a change of attitude within the man. As change starts to come over a man, it is quite obvious when that change becomes evident, because it reflects in everything the man does and says, how he acts within the institution. Not enough time has been spent with the inmates. We get lost in the bureaucracy of these institutions, case overloads and things of this nature. We do not have programs that are oriented towards the inmates. We have got to spend more time with the men.

Senator Lapointe: If, as you say, about 40 per cent of the inmates should never be in prison, what would you suggest as a sentence for these people, apart from prison? Apart from jail, what would you suggest?

Mr. Royer: Parole.

Senator Lapointe: At once?

The Chairman: Or probation.

Mr. Lyding: I think controlled release. I spent some time living in the community correctional centre in Calgary and observed men coming in, some of whom had lack of confidence in presenting themselves to an employer, for instance. They would state their negative aspects, stating jobs they had held, and then go on to add that these were jobs in institutions, when they should not have added these things. It took several tries before some of these men could come around and think positively about themselves. Also, they come out with not too much money. I have seen these pre-release centres where they were able to earn enough money, and because they have to bank it in there they would learn to budget, and things like this. They are learning how to live, and I think controlled release is an answer.

Senator Lapointe: Do you mean half-way houses?

Mr. Lyding: It is similar to a half-way house, but we do not call it that.

Mr. Royer: I would like to put forward a suggestion. Let us take the correctional process and structure it from super-maximum penitentiaries all the way down, but more structured than they are at the present time. When we put a man into this correctional process, he then has the opportunity either to work himself down and out into the community or the same opportunity of working himself backwards in the system. I think this is going to work. The men will work towards dealing with their problems, towards getting out as soon as possible. It will be an incentive to work yourself out of prison.

The Chairman: Is this living-in concept going to help us along the line? We do not know much about it yet, do we?

Mr. Royer: I think initially, in theory, it was probably a good idea. In fact, it is a good idea, but we have not taken into consideration all the variables. We have in the prison system, unfortunately, people who just think that if you are in jail, if you have committed a crime, you should be shut away, locked away and forgotten about, which would be fine if it worked as a deterrent, but it does not work. If everybody was impressed we would not have such a failure rate. The best protection of society is rehabilitation, if a man out there can get along in society.

The Chairman: Get the individual thinking so that he wants to get along in society.

Mr. Royer: Right.

Senator Hastings: You mentioned this change. Is the change permanent, or have you, from your experience and from our treatment of inmates seen it operate negatively, like changing down?

Mr. Royer: I missed your question.

Senator Lapointe: A change for the worse, you mean.

Senator Hastings: Have you seen a man change for the better, catch on and start to move, and then as a result of continued custody lose his change?

Mr. Royer: Certainly.

The Chairman: Lose his interest in changing?

Mr. Royer: Yes, certainly.

Senator Hastings: Then I come to this question of sentencing, where one is sentenced to ten years or life, and so forth, those would work as a deterrent?

Mr. Royer: Yes, absolutely.

Senator Hastings: That is the definite sentence. And the one-third for parole, the regulation that you must serve one-third of your time before consideration, is it unnecessary?

Mr. Royer: Certainly, it is unnecessary. At what point do we determine where a man is going to have that change of attitude? Is it going to be one-third, one-half or three-quarters? We cannot talk about a certain amount of sentencing in terms of where a man is at psychologically. This is ridiculous. A man can change; this is the whole thing that we should see. If all the variables are there, the conditions, the conducive conditions for a man to want to change, and if help is available after that; at what point is it? There is no set point. Where you sentence a man, for instance, to ten years, you cannot say that at one-third of that time he is going to be ready, that you are going to consider him at one-third of his time. It could be a half, or he may have to do all of that sentence.

Senator Hastings: And never change?

Mr. Royer: And never change. There is no particular point where you can say a man changes, in a sentence.

The Chairman: This may be a good point to introduce mandatory supervision.

Senator Hastings: Would you care to comment on mandatory supervision?

Mr. Royer: I cannot see any value to mandatory supervision.

Senator Hastings: A man coming out on parole gets assistance and guidance from the parole service. If a man did not get the parole, should that service not be available to him, and does he not need it more?

Mr. Royer: I ask you to consider in your minds that, right now in the system, a man will put in an application for parole at one-third of his sentence. Let us say he is denied that parole at one-third of his sentence, and he is told he is not ready. He tries again at one-half of the sentence, and they still say he is not ready. You should be able to see what that man's attitude will be at the time, to mandatory supervision. He is not going to accept it. He would say, "If you were not ready to give me a parole then, and you say I had not changed then, I certainly have not changed now; I do not want your supervision and do not need it."

Senator Laird: How can we accurately test when a man has reached the stage when he is ready?

Mr. Royer: Well, senator, it is so obvious, in the environment I am talking about. When a man changes, he communicates that change in everything he says, in everything he does.

The Chairman: The fellows with him know.

Mr. Royer: Oh, certainly.

Senator Hastings: Do the administration not know? Are you saying that?

Mr. Royer: I say that, for the most part, they do know.

Senator Hastings: They see the changes?

Mr. Royer: They see the change. It is quite evident. We have competent people working within the system, psychologists, psychiatrists, et cetera, in addition to the man's behaviour characteristics; and this determines whether or not he is playing a game, whether he is trying to fool people. I think they are doing a really good job.

Senator Yuzyk: Does the Parole Board or anyone from the Parole Board consult those of you who, I might say, would be leaders among them, just to judge a person?

Mr. Royer: On a very limited basis. This is what we had stated, that more of this should be done.

Senator Yuzyk: It is starting, at least, in the right direction, is it not?

Mr. Royer: Yes.

Senator Williams: I would like to direct a question, Mr. Chairman, to Bob. This may have been covered while I was absent from the room. Indian inmates coming from areas of isolation or non-rural areas in the distant north, they may not be able to read or write in English, or in some cases in French, it may be. Is there any provision to assist those inmates towards learning how to read or write? How do they pass their time, as many inmates have considerable reading time? In due course, do they adapt themselves to the environment of the inside; and, if they do, do they learn quickly, or are they reluctant to participate?

Mr. Royer: I would like to say, first of all, as a matter of information, that in the western provinces, in federal penitentiaries, we have approximately 40 per cent, in that area, of natives. In the provincial institutions it is much higher, and up until recently in the women's institutions, the provincial institutions, it was as high as 100 per cent.

The native people make up 2½ per cent of the Canadian population. Something is wrong. And something is wrong with our correctional process when we do not have a scheme that involves a special consideration for a special problem.

You had asked about the native incarcerated inmate who comes from the rural areas, the outlying areas, and comes into the institution. It is a white-structured institution, white-orientated. It just has no effects whatsoever.

I can go on from that again to the parole system. There is a lack of communication between native ex-inmates on parole and their parole officers. The reason for this is that we do not have enough native people working in the system. We should have them working in the institutions. We should have them working in the parole service and in all phases of the correctional field. We have not got them.

Senator Fergusson: Are there enough trained who could fill those positions?

Mr. Royer: That depends on your definition of "trained." My definition of training is this. If you have the life style, background, and the experience to deal with the social affairs of native people, you are trained, bar all the educational prerequisites that are necessary right now to get into this system.

I will give you an example. I came into the institution with a grade 8 education. I took just a few series of courses, minor things. I have to write the grade 12 general education test and pass this, and I am accepted into the University of Calgary right now. This just does not apply only to myself. I am trying to give an example of the amount of human potential that is in the institutions, and we are not taking advantage of it.

Senator Hastings: Mr. Royer, I am going to ask this, and put it to the three of you, because I happen to know that you arrived at the institutions with a kind of questionable background, and that in Mr. Lyding's case he was a kind of difficult inmate for three years. What happened to you?

Mr. Royer: Okay, I will go into that. I was once very young, when I was 24 years old, I believe I was—

The Chairman: So were we all.

Mr. Royer: Just to give you an indication of the attitude that I once had, the type of person I once was and the amount of crime I was involved in, I was once threatened, personally, from the attorney general of the province of Alberta with the Habitual Criminals Act. I was 24 at the time. I was considered a write-off. In other words they thought, "There is absolutely no hope for this man, he is incorrigible."

Then I came to the Drumheller Institution. I am going to try to relate just exactly what transpired. I left the maximum security institution. I do not know if you have any experience with these places, but the first thing that happened to me was that they did not put the handcuffs on me when I came out of the gate. The man spoke to me like a human being. You know, I was very suspicious at first. I thought, "What is this guy up to?" We got in the car and he said, "Here are some cigarettes." There were tailor-made. We generally smoke tobacco. He said, "Here are some cigarettes to smoke, see, and there are some cookies on the back seat." I was very suspicious. I thought, "They're up to something here. I am not used to this."

That is just to give you an indication of the different types of attitude. And when you treat a man like a human being he becomes a human being. We are just people, you know. We do not have horns or anything like that.

Senator Hastings: Would you say that the biggest contribution to your change was the treatment you received, then?

Mr. Royer: That is right, and then there was my involvement in the Native Brotherhood, with a liberal director who encouraged that type of involvement, and this helped me gain so many insights into so many things that it is just impossible to relate.

Senator Hastings: Mike, would you care to tell us your experience?

Mr. Hewlett: About a change?

Senator Hastings: What contributed to the change?

Mr. Hewlett: Well, I was still in the maximum. I do not know if "bitter" would be the expression. I was just shot, finished, with no ambition, no nothing. It was again a group, a Seven-Steps group. An old guy just asked me where I was going, and I had no idea where I was going. I had not much memory of where I had been. This man had exactly the same problems and the same background. He had been at it a lot longer. He was in his forties, planning to get out in his fifties. I was at that time 29, probably going to be getting out in my fifties, after doing a few more bits. And he talked to me, which is all he did.

Senator Hastings: This man was an inmate?

Mr. Hewlett: He was an inmate. He is out now, by the way, and he is still in his forties. We just sat down and discussed it. I was invited to the Seven-Steps group. I just sat there and did not say a word for three months. I was watching, suspicious, wondering what everybody else was up to. I thought, "I should be getting right active in this, because this has got to be a good way to get a parole." That is what I thought. So I got active. Naturally, I wanted a parole like everybody else. I was just sitting there listening to the guys. They got me to speak about myself, about my problems. Well, you cannot lie; you can try, but you cannot lie with any degree of success. They knew when I was telling the truth. Finally, the truth came out and I had to look at it, stare it right in the face. And when you do not like what you see, you change. It is as simple as that. I started changing. When I was transferred to Drumheller, we had the Seven-Steps program there. It is slowly working. It is having an effect on me.

Senator Hastings: I wonder if Mr. Lyding would care to give us his experience.

Mr. Lyding: Well, I was extremely bitter. I hated myself and took it out on everybody else around me, including the authorities. I stayed that way for a few years, and in that time I was also seeing the psychologist in Prince Albert. When I used to see him at first it was only a game. I would like to talk to him and fence with his mind. He was fencing with my mind, I thought. It was just a little break in the prison monotony. But in all this time he was actually helping me. He would cut me up. By "cutting me up," I mean he was very frank and said, "You are this and you are that," and I would go back to the cell and I would think about these things. It was a very slow process. I cannot say that I changed right at this or that point. I cannot pinpoint the fulcrum of it. It was a very slow process, over a period of time. I made my changes.

Mr. Royer: I know the psychologist in question. He resigned from the service out of frustration. I know this personally. I have been in contact both inside and outside the institution. We have many people in the system who recognize that, in order to do the type of therapy that we have recommended, for instance, we have to have a change in the correctional process.

Senator Hastings: A change of attitude.

Mr. Royer: A change of attitude, yes.

Senator Hastings: Mr. Lyding, would you care to tell the committee what you are doing now? I think they might be interested to know.

Mr. Lyding: Well, I will just start with when I was first incarcerated. I took my grades 10, 11 and 12 by correspondence and obtained first-year university towards a Bachelor of Commerce degree. I am working in hopes of finishing that and receiving that degree, and then I want to go into law after that.

A while ago Bob was talking about the obvious change in men. As inmates, we can see changes in men. Some guys are pretty good actors, though. This is what makes Mr. Street's job so difficult. He is trying to detect this change. It is pretty hard. You get some pretty good actors, and it looks like they have changed.

I think you will agree with me, Bob, that we can see some guys putting on the act. They are pretty good at it. Sometimes even I have been fooled looking on from the inside, so I can see Mr. Street's job is extremely difficult and it is hard sometimes to see this so-called obvious change. It is not always so obvious.

Senator McGrand: Mr. Chairman, I have here a copy of the *National Catholic Reporter* of June 9, 1972. On page 7 there is an article entitled, "The View from Inside". The heading is, "Prison reform: Is it an impossible task?"

This lengthy article was written by Joe Mulligan, who was a Jesuit seminarian who was so convinced that the Vietnam war was morally wrong that he got involved in burning draft cards. As a result he spent 22 months in prison.

The Chairman: Now that we have this "Presbyterian Scotsman" in jail, let us get on with it.

Senator McGrand: Apparently, Joe Mulligan spent his time during those 22 months studying and observing his fellow inmates. It gave him something to do. This is what Mr. Mulligan says in the article:

From my experience and observation here, I would say that at least 95 per cent of the inmates do not belong here, and their presence here is utterly wasteful, destructive, and unnecessary from the point of view of society's safety.

Mr. Mulligan then refers to a statement by Dr. Karl Menninger, whom we all recognize as one of the foremost psychiatrists in the United States, who has done so much to rehabilitate mental patients.

Joe Mulligan says:

Dr. Menninger points out that the experience of incarceration, no matter how many superficial niceties an institution may have, results in serious damage to a person's self-esteem, self-image, and self-confidence, and serious impairment of his decision-making capacity.

This man Mulligan, having been released, found that there had been such a process of deterioration during that 22 months that he decided to go to a half-way house to bring himself back to normal. Now, would you just comment on that?

Mr. Royer: I agree with that 100 per cent. That is the most accurate estimation that I have ever heard.

The Chairman: That is why we get 73 per cent back, or whatever it is?

Mr. Royer: Yes. Take away a man's pride and take away his valuation of himself and make him think that he is less than anybody else, and this is exactly the situation you will get.

Senator Lapointe: But what do you suggest to take the place of prisons?

Mr. Royer: We are not suggesting anything with regard to the place. What we are talking about is how you utilize the prisons and the entire correctional system.

Senator Lapointe: Is it the prison which is bad in itself, or is it the regulations within the prison?

Mr. Royer: It is the attitude and philosophy behind the "eye for an eye" type of retaliation.

The Chairman: Well, is it not true that up to four or five years ago the only authority the prisons had was custodial? There was no budget and no provision for any kind of rehabilitative or correctional work within the prison. Is this your understanding, based on your experience?

Mr. Hewlett: Prison means a loss of dignity. Keep a man in for five years, and what do you have left?

Senator Lapointe: But even if the regulations and the philosophy were changed, you would still have to live with all these people together. Do you like that, or do you not like that?

Mr. Royer: Being realistic, I would say we cannot abolish prisons. That is like abolishing human error. You just cannot abolish prisons. You have to find more effective ways and means of dealing with them.

The Chairman: To make the prisons more effective, in other words, and to make them do what we want them to do?

Mr. Royer: That is right. This is why we say that you cannot take a special part of the system, like parole, and divorce it from the rest of the system. You cannot just look at that one aspect, because it is only a part of the whole system. As we have recommended, we have to expand the thing to include the whole correctional process.

Mr. Lyding: We think you should look at the sentencing, the conditions inside the institutions as well as the parole system.

Mr. Hewlett: Yes, because now you are just getting the man at the end of his sentence.

The Chairman: We are aware of that, and the further we get into this subject the more we realize that we are dealing with one small

aspect of the situation, and we realize that the problems lie much deeper. But even so, limiting ourselves to parole, we find we have a pretty big job, and can only do so much in so much time, and it is pretty clear that when this inquiry is finished there will certainly be other worlds for us to conquer.

Mr. Hewlett: That is why we suggested that through this inquiry you should try to get the Parole Board interested in the man at the start of his sentence.

The Chairman: Now let us go back to the living-unit concept as I understand it. If you had as part of that living-unit concept, right from the beginning, parole people in there with ten or twelve people, so that from the moment you started off with the man people were going to be concerned and working with him so that he could talk to them and he could understand them, is this important, do you think? Would this be helpful?

Mr. Royer: Yes, because this would establish communication. In this way the inmate would understand exactly what the parole system involves, what is expected of him and what is required of him.

The Chairman: With the parole system at the present time the emphasis is on control of the person in society; that is to say, that he spends part of his sentence in society under control. Would it be helpful if we were to take a small part of the \$10,000 which presumably would be saved each year and make it available to the Parole Board so that they could give a man not just control but support during that period when he is trying to learn to live in society again? Do you think this would be a helpful thing?

Mr. Royer: It certainly would.

The Chairman: You know, everybody is in favour of spending money, and I am not just putting it out on that basis, but I am wondering whether you think one of the reasons people fail is because there is not enough support, quite apart from the question of control.

Mr. Royer: That is right. As Lloyd mentioned in his brief, we are saying to the government here, "Let us not do any patch jobs; let us not try to patch things up in the middle of this hearing: let us wait until the committee has finished its inquiry before we start making any changes within the parole system," because the government seems to have been doing that for years. This is wrong. Some special aspect shows up, or some failure, and right away everybody wants to do a patch job, and this just is not effective.

Senator Williams: During my short visit to Drumheller, particularly in the vocational or rehabilitation part of the institution. I noticed one thing and I asked one or two people about it. In the radio-television shop, which is practically for chronics, there were no Indian participants. Is that because their standard of education does not meet the requirements for that particular type of training?

Mr. Royer: In all probability, yes.

The Chairman: Or lack of interest and encouragement?

Mr. Royer: I would say we do not have enough programs in the institution relevant to the background and culture of native people.

Senator Yuzyk: Is there also a discrimination factor involved?

Mr. Royer: Yes, to a degree.

The Chairman: A serious degree?

Mr. Royer: Much the same as there is in society generally.

Senator Lapointe: Do you consider it as a kind of a joke when you hear a judge giving a sentence of two years, five years or ten years, when you know very well that you will not serve that sentence because of the parole system? When he is imposing the sentence, are you almost laughing at it, or do you take it seriously?

Mr. Royer: If you are going to jail, it is quite serious. But recently an inquiry was made and magistrates were asked to indicate whether they adjusted their sentences in the light of the possibility of parole being granted. Two out of three admitted they increased the length of the sentence, along with their reasons and so forth. The point I wish to make is that the wider the applications for parole the higher the sentences. The magistrates make up for it in sentencing. I could probably cite you all kinds of cases.

Senator Lapointe: Do you think that all judges are acting in this manner?

Mr. Royer: Two out of three admit to it.

The Chairman: And all of them are aware of it.

Mr. Hewlett: What happens in the case of a man who does not receive parole is that since a judge wanted him to serve two years in jail he sentences him to six years. He should not have been in there in the first place.

Mr. Royer: I do not like to do this, but I can cite my own case as an example. Upon Senate recommendations the law was changed with regard to theft of articles under \$200. It used to be theft under \$50. This does not apply any more since \$50 is almost the same as \$200. I was sentenced to four years for stealing \$75 to \$80 worth of copper wiring.

Senator Lapointe: This is proof that inflation is increasing.

The Chairman: Certainly it has inflated to four years.

Senator McGrand: How many years have you served? How long ago did you receive that sentence for stealing the copper wiring?

Mr. Royer: A little over two years ago.

Senator McGrand: And you are still serving time?

Mr. Royer: I am serving a parole violation in addition to the two years, so it is four years altogether.

Senator McGrand: You received a sentence of four years for stealing the copper wiring? For what did you receive the extra sentence?

Mr. Royer: For stealing the copper wiring.

Senator McGrand: For what were you in jail in the first place?

Mr. Royer: Originally, I was sentenced for possession of explosives and safe-breaking instruments.

Senator Hastings: Dealing with the change of attitude between the keeper and the kept, could you tell the committee, out of the 400 men in Drumheller how many carry a shiv?

Mr. Royer: I have not seen any.

Mr. Lyding: There is the odd one around.

Senator Hastings: Out of the 400 men at Prince Albert how many carry a shiv?

Mr. Lyding: There are a few more, but I cannot say how many.

Senator Hastings: With all the custody we have in maximum security institutions it seems to work to the opposite effect.

Mr. Royer: Oh yes, you can get all of your drugs inside the institution.

Mr. Lyding: You can get whatever you want, except for a woman. Just because this is a maximum security institution this does not mean these things will not get into the institution.

Senator Hastings: In spite of all the security it gets into the institution, and where there is less security there is no problem.

The Chairman: Of course, you have different people involved.

Mr. Hewlett: They are the same people.

Mr. Lyding: When the security is tighter the men group together and fight the administration.

Senator Hastings: It becomes a challenge.

Mr. Lyding: It makes the inmate body closer. The we/they line is more definite in maximum security. When the security is not so great that line becomes fuzzy and the inmate body is not as close.

The Chairman: Would this be the situation? In a maximum security institution you have society, through its authorities, saying, "We are going to make you do this." However, in medium and minimum security institutions society says, "We are going to give you an opportunity to do this yourself."

Mr. Lyding: That is exactly the case.

Senator Lapointe: What do you think of female authorities and counsellors? We have tried that system in certain places. Would you think it would be dangerous or useless, or what?

Mr. Lyding: I do not think the criteria should be whether they are female or male. As Bob Royer has mentioned his life experience, if you can get people on the staff and also on the Parole Board who have experienced life and know some of the cultural problems involved, this would be helpful.

Senator Lapointe: What do you think about female staff in the kitchen and laundry, for example?

Mr. Lyding: A woman adds a refining quality where men are concerned, and I think it helps.

Senator Lapointe: Are there any prisons which have female staff?

Mr. Royer: Drumheller has female staff in the office.

Senator Hastings: You had a female parole officer. Would you care to mention this?

Senator Lapointe: You seem to be dreaming about her.

The Chairman: Perhaps we should leave the dream where it is. After all, there is no longer discrimination between the sexes in the government service, so there is no reason why there should not be female employees in any of the institutions, if it is felt desirable.

Senator Fergusson: I would like to add that there may be no discrimination on paper; however, there is discrimination.

The Chairman: I will buy that.

Senator Quart: What would your opinion be if three, four or five senators went to visit the various institutions?

Mr. Lyding: I think this is excellent.

Senator Quart: You would not consider it phoney?

Mr. Lyding: No.

The Chairman: I wish you would put the question another way. I would like to have their opinion.

Senator Quart: What is your opinion on this matter?

The Chairman: What is the most useful way to do this? How would you suggest we proceed?

Senator Quart: Would all of the inmates be brought together to ask us questions, like we did on the Special Senate Committee on Poverty, as well as other committees? Probably we would have a hard time answering their questions. But do you think this is a good idea?

Mr. Royer: Yes, I think it is an excellent idea.

The Chairman: Should we send a group or only one person? Should we meet the prisoners as a group, or should we meet individuals who are invited to come in and talk with us?

Mr. Royer: I am going to suggest you approach Senator Hastings on this question. He has had considerable experience.

Mr. Lyding: I would suggest that you do not come as a group. Perhaps it would be better if one or two took part in, let us say, the Native Brotherhood meetings. I would not suggest that we call the entire inmate population together. It would lose everything.

Senator McGrand: If I were to interview an inmate to find out the facts of how he got into crime, starting back with his childhood and following through from that period, would it be better done in an institution by means of a talk with the inmate, or have him visit me in a restaurant or hotel, where he could maybe drink a little beer, smoke a cigar and have a sandwich?

Mr. Lyding: Get into his environment; it will help you too.

The Chairman: Senators, have we had a full morning?

Senator Laird: Yes.

The Chairman: May I then, on your behalf, thank Mr. Lyding, Mr. Royer and Mr. Hewlett for what I consider to be one of the most useful contributions that has been made to our hearings to date? Thank you very much.

The Committee adjourned.

APPENDIX

PAROLE IN CANADA

A Brief on Behalf of
the Inmates of Drumheller Institution
including a Native Viewpoint

to the

Standing Senate Committee
on Legal and Constitutional Affairs

March, 1972

Honourable Senators:

We welcome the current study on all aspects of parole initiated by the Senate Committee on Legal and Constitutional Affairs and we thank you for the opportunity of participating in the enquiry.

The Parole Board faces a maze of difficulties and has performed its tasks successfully despite these difficulties. Since the establishment of the Parole Board in 1959, many, many modifications in parole policy have been put into effect, and it is our opinion that these modifications have increased the Board's effectiveness.

We do, however, believe that further modification in the Board's policy would again improve its effectiveness. Therefore we submit the following suggestions for your consideration:

PAROLE REVOCATION

A parolee should be allowed to defend his case when his parole officer has made application to revoke his parole.

Section 12 of the Parole Act allows a member of the Board or any person designated by the Board, by a warrant signed by him, to suspend any parole. The paroled inmate apprehended under a warrant issued under this Section shall be brought as soon as conveniently may be before a Magistrate, and the Magistrate shall remand the inmate in custody until the suspension of his parole is cancelled or his parole is forfeited or revoked. (Subsection 2).

The Magistrate checks the warrant of apprehension and if all is in order, he endorses it. The parolee is not allowed to present a defense with regards to why his parole should NOT be revoked or suspended.

Paragraph 3 allows parole officers the right to review the case and gives this same parole officer the power to continue suspension pending consideration by the Board who review the case taking into consideration the recommendation of the officer. Keep this in mind. The parole officer's report may, due to a personality conflict, be biased and therefore his judgement could be prejudiced against the inmate making an objective decision impossible. The Board, basing their decision on the strength of this report, are likely to render the same biased decision that the parole officer would have made. Furthermore, since it takes the judgement of two or three members of the National Parole Board plus community reports, plus the institution classification officer's reports to give a man a parole in the first place, why allow only one recommendation to unduly influence the Board's decision.

We suggest that the members of the Parole Board, in consultation with the prison classification department, interview the parolee AND the parole officer together, and jointly decide whether the parole should be revoked.

We also suggest that an inmate be allowed to defend his parole by calling witnesses; i.e.: to dispute hearsay information that the parole officer may have based his decision on, or any other evidence that might show why the parole should not be revoked.

Inmate Interviews

The Parole Act, Section 9, states that "... the board is not required to grant a personal interview with the inmate or any person on his behalf."

We suggest that the Board *must* be required to grant a personal interview with the inmate before either granting or revoking his parole.

The only device that the Board can use to reveal the true attitude of an inmate is through not one, but a series of personal interviews, and these interviews should be conducted by qualified persons outside of the Penitentiary Service.

Regardless of any dedication that the prison counsellors or classification officers might have towards an inmate's cause, it is rare when an inmate has reciprocal faith and trust in these representatives of his keeper. The moods of these men can and will change with the internal politics within the prison as well as the general political picture in the country. With the picture constantly changing, it is likely, and highly probable that resentments will build up and all faith shattered, yet the inmate concerned could be quite ready and fully capable of assuming his correct and earned place in society.

We suggest that the Parole Board place trained interviewers within the prison in order that the Board might get to know an inmate well before any decision is reached concerning that inmate's future.

Reserve Decisions

There are too many instances where upon the inmate's eligibility parole date he is told by the Board that he cannot be given a decision at that time since all the required reports have not yet been received by the Board. This has happened to inmates who have applied five months in advance of their eligibility date.

We suggest that the processing of an inmate's parole application be completed by the time his eligibility date arrives. After a man has spent five anxiety filled months awaiting a yes or no answer he is already insecure and will view every further delay with mistrust of authority, maybe causing him to lose a lot of the control that he had newly acquired over his suspicions and other deviant traits.

Parole Deferral

When an inmate receives a parole deferral, which is in some cases a two year deferral, he may be told that he hasn't changed or any other obscure reason. Nevertheless, by virtue of the Parole Board's own reasoning, the inmate who has been deferred to some future date needs MORE help than the one who has been granted a parole.

We suggest that the Parole Board outline a program for those who are deferred, such as outside work with therapy sessions leading to day parole, thus not leaving the inmate in a vacuum where his morale will deteriorate further.

A successful transition to society depends on the inmate having learned to live in freedom before he is granted freedom.

Sentencing

We believe that due to the trial judges awareness of the shortening of sentences through remissions and parole, that they are in fact increasing the length of sentences to compensate for this and keeping the convicted person in prison longer.

As it is common for judges to submit suggestions to the Parole Board, we suggest that the Parole Board in turn should make every effort to familiarize the judges with their purpose. With the Parole Board's efforts being defeated in the courts, the whole system is being undermined, as an inmate cannot be released when ready but must wait until a future calendar date.

We suggest that a flexible parole policy include a plan whereby a convicted person could be put through a diagnostic hearing to assess his problems immediately after conviction, but before sentencing. The Parole Board could work with the judges in determining the sentence putting maximum emphasis on the man's rehabilitative possibilities. There is no doubt that there are inmates who require little or no incarceration, and if they were given a controlled release immediately after sentence, would in all probability never return before the court. However, these same inmates, will acquire new values from the deviant culture if they spend any time in the penitentiary, which just hastens them down the road to incarceration again.

Privileged Information

In cases where the institution has made a strong recommendation for parole, basing their judgement on institutional behaviour over a considerable period of time, and the Parole Board gives an unfavourable decision because of "privileged information", then the emphasis should be placed on the institutional report and the parole be granted.

Take the case of a man who has difficulty expressing himself . . . during the parole interview his anxiety level is high, he is nervous and possibly scared, and he will probably leave the Board with an unfavourable impression. If, in his case, there is also "privileged information" (the man's wife has been writing regularly, but, unknown to the inmate she is also living with another man. When the community investigation was made the woman told the investigator she wanted nothing to do with the inmate and expressed fear for herself) then the inmate's parole would be deferred or denied.

Perhaps, since the man has theoretically changed his character traits, he would be able to make adjustment to this situation and make new parole on the spot . . . IF HE WAS MADE AWARE OF THE PROBLEM!

We suggest that "privileged information" should not be used to deny a parole, but counteracted with a new plan or new life for the inmate . . . WITH THE INMATE'S FULL KNOWLEDGE.

Additional Charges

If a man has made every effort to waive in additional charges that are standing against him, and the police agencies involved will not proceed with the charge but in turn give the man a stay of proceedings to ensure that the inmate will not return to their area, then the man should still be considered for parole. It has occurred that an inmate is due for parole and has made considerable progress in the institution but has found out at the last moment that he still has outstanding charges to be brought against him on his release. This only serves to shatter all his hopes and cancel any chance he had for a parole. An inmate must be informed at the start of his sentence of any further outstanding charges and be given every chance to dispose of them. If, after he has attempted to finalize these charges, and the authorities will not co-operate, then he *must* be granted a parole. It is unjust enough that an inmate *must* enter a plea of guilty in order to waive in an outstanding charge without further jeopardizing his freedom by refusing to dispose of all charges.

Compulsory Therapy

In some institutions Group Therapy sessions are compulsory. It is made quite plain that if the inmate does not go along with this program then there is no use in the inmate writing for a parole. Group Therapy should be recommended to most all inmates, but should not be forced on any as a condition of parole. This only strengthens the wall that all inmates build around themselves, and no threats or fears by coercion will tear this wall down. An education program pointing out the benefits of attending Group Therapy sessions could be instituted as mentioned in our Earned Freedom proposal.

Earned Freedom

A rehabilitation program must be as flexible as there are inmates; what will work for one will not work for all . . . consequently many inmates leave prison unqualified for any occupation because nothing interests them. A possible approach to this problem and a final solution might be "EARN YOUR FREEDOM PLAN".

Give the inmate the incentive to learn and allow him to earn his parole. There is a great deal of lethargy in prison. This lack of any motivation is an obstruction to self-improvement. Many inmates cannot see the long-run rewards in obtaining a trade or in improving education. They cannot realize that attending therapy sessions will increase their awareness of their personality defects and bring them closer to a solution of their problems.

Upon conviction, perhaps even before sentencing, but definitely before incarceration, an inmate should be given a battery of aptitude and personality tests to indicate his possible capacities and tendencies. Either the travelling parole board or the recommended court parole representative should discuss the plan in detail with the inmate, pointing out that he can earn his parole by improving himself, either by obtaining a trade or improving his education or by attending and benefitting from group therapy, and by behaving himself while in prison.

John Doe is sentenced to 6 years in the penitentiary, but before he begins his sentence the Earn Your Freedom Plan is explained to him in detail. He takes the aptitude and

personality tests and in conjunction with his classification officer maps out his goal, which is in this case completing his grade 12 over the next year and a half. It is also felt that attending group therapy sessions twice a week would be to his advantage. One and one-half years is a realistic figure for finalizing his grade 12 and a suitable period of time for this man to spend in therapy. The travelling parole board would then interview John Doe, look at his plan, and upon approval of it recommend that if he achieves these goals and behaves himself while in prison, then he will have earned his parole and be released after one and one half years on a six year sentence.

It is hoped that the Earn Your Freedom Plan would provide the motivation that is necessary for the inmate to initiate self-improvement. The question then comes to mind that . . . "will we just have an educated bank robber?" It is further hoped that through the process of improving himself, finally achieving a goal . . . whether it is a trade course or an academic course, or simply finding himself through therapy, that the inmate's twisted sense of reasoning (the kind of thinking and realizing that brought us all to jail) will change for the better in that he will see himself as he actually is and will do something positive about it in the future.

Parole Recommendation

There are various "self-help therapy groups" active at this time that are of great value to those inmates who genuinely desire help, such as A.A., SEVEN-STEPS, X-KALAY, etc. These groups, over a period of time through their encounter sessions, get to know their own members far better than an administrative report could ever witness. A *responsible* group or society should therefore be asked to submit a recommendation on a member's behalf, and this report should be given serious consideration at the member's parole hearing.

The inmate's immediate supervisor, the man who knows him better than anybody else, should be required to supply a full parole report on the inmate, and this report should have a larger bearing on his case. An inmate's supervisor gets to know the inmate over a period of perhaps years, under all circumstances and moods and is in the best possible position to access his worth accurately.

Inmates File

Inmate's files should be open to the inmate as it is imperative that he should know the impressions of others. By being aware of these impressions it is hoped that he will gain an insight into himself and be aware of how he projects himself to others. He would then be able to correct his ways and work towards his own rehabilitation, not only to society's standards, but to the standards which he feels he can live up to when he is returned to society.

By allowing the inmate into his files it would better enable him to defend himself against possible biased or prejudiced reports, and know why he was denied requests such as day-parole, etc. This would help to relieve the emotional strain by allowing him to read the facts instead of someone's version which could vary from the truth.

Parole Officers

We urgently require better qualified parole officers. The present parole system employs many young officers, recently graduated from university, who, while possessing the proper educational prerequisites, are desperately short of living experience and their very life-style and backgrounds restrict them from giving adequate counselling to a parolee.

We feel that ex-inmates should be employed in this field. Ex-inmates can more readily assimilate the problems we encounter and will be able to counsel in a more effective manner.

Public Relations

More publicity should be given to the fact that there ARE SUCCESSFUL PAROLEES, for example, there are 75% of the parolees who can be considered a success and have projected total yearly earnings of 12 million dollars. These are facts that should be fed through appropriate levels of the press for favourable publicity. Along with these facts, individual human interest stories (where ex-inmates have succeeded) could be given to the press for publication. Names and locations of the individuals may be changed to protect them from undue harassment.

This type of favourable publicity would tend to counter-act and balance out the bad publicity by giving a more realistic picture about the positive effects of the present parole system. More favourable publicity may entice greater community participation in offering supervisory services for parolees as well as community involvement projects for the parolees.

Incentive Program

An incentive program should be formed to enable a parolee to work toward shortening his parole. We now have a program within the prisons which gives an inmate a shorter prison term for his good behaviour.

We suggest that a man on parole be given an incentive for good behaviour by extending remission into the period of his sentence that he serves on parole. For every month that the parolee shows exemplary behaviour he should be given the same three days remission that he would have earned in prison. If the parolee serves three-quarters of his parole without any problems then he should be given the one-quarter remission that he would have been entitled to had he still been in prison.

Life Sentences

It is recommended that the present legislation stating that a minimum of 10 years must be served before parole may be considered for commuted death sentences, capital and non-capital sentences, be amended. Lifting the 10 year minimum would not mean that all "lifers" will be paroled before the 10 years, some may have to put in considerable more time. Since these inmates generally make excellent parole risks, would it not be more beneficial for society, as a whole, as well as the inmate, to put him on the street as soon as he is ready and could become an asset, instead of keeping him a long term liability under these present circumstances.

Mandatory Supervision

Mandatory Supervision under the Parole Act is defined as the release from custody of an inmate after he has served three-quarters of his sentence less the three days per month earned remission. The inmate is then placed under the Mandatory Remission (parole) to serve the remainder of his sentence, including the remission that he may have already earned, on the street, in society, but under parole supervision **WHETHER THE INMATE WISHES TO ACCEPT THE CONDITIONS OF RELEASE OR NOT!**

If the inmate, for some personal reason, does not wish to trade all of his earned remission for an immediate release, then he is escorted to the prison perimeter and released under Mandatory Supervision automatically **EVEN THOUGH HE HAS NOT SIGNED A PAROLE AGREEMENT.** The R.C.M.P. are then notified, a warrant issued, the inmate is arrested for parole violation, and then returned immediately to prison under Section 12, Paragraph (1) of the Parole Act. As it is the National Parole Board who authorized the arrest warrant, it will automatically follow that his parole will be revoked. The inmate is therefore back in prison with the subsequent loss of all remission then standing to his credit—**INCLUDING EARNED REMISSION**—Section 16-(1) and (2).

This then can happen to an inmate who may have been a model prisoner and has **COMMITTED NO ACT OR OFFENSE TO WARRANT ANY FORFEITURE OF REMISSION.**

Section 12 of the Parole Act states that a parole suspension is necessary or desirable in order to prevent any breach of any term or condition of the parole, or for the rehabilitation of the inmate, or for the protection of society. How can a man breach a condition of a parole that he has not agreed to accept nor authorized? How can a return to prison further the rehabilitation of a model prisoner who has earned this remission? How can society be further protected by the return to prison of a man whom the Parole Board has just released? And how can the Parole Board revoke the suspended sentence of a parole of a man whom they deemed fit for release that same day?

The Penitentiary Act, by means of a Commissioners Directive states that earned remission, once earned, cannot be taken back. How then can the Parole Act, Section 16(1) take earned remission away from an inmate?

Conclusion

Although the primary purpose of incarceration is for the protection of society and the punishment of an individual for his offensive actions, we believe that equal emphasis should be placed on inmate rehabilitation and resocialization. It is only a matter of time before the majority of offenders who are now serving terms are released. Thus it is to society's advantage that an inmate who is released will be an asset to society instead of another liability. Therefore any modifications in present parole policy that are conducive to rehabilitation and in effect help inmates to rehabilitate themselves are also measures to protect society. In view of this, we suggest the Parole Board increase the use of Day-paroles and

Pre-release programs and hopefully, the suggestions we have submitted will be considered and implemented.

Respectfully submitted, we are,

Lloyd Lying
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A NATIVE VIEWPOINT

Introduction

There is no power like the power of an idea whose time has come, and our idea has been long overdue. Our idea has been in our minds for years but the "cage-keeper" of our idea has been society's failure to listen. The common trend or supposition of people (penologists, experts, etc.) has always been a qualified assertion that as inmates "we are not supposed to be intelligent." If this be the belief of society, so be it; for the recommendations included in this brief shall stand armoured to enter the arena of debate on their own merit.

Our brief does not ignore, or seek to discredit existing programs and agencies, and does not question the qualifications of interested parties. Our recommendations are not intentionally geared to segregation, although they will be interpreted as such by those with ill-understanding. Our brief is not based upon theoretical assertions or superficial analogy, but rather it was conceived and drafted upon facts, figures and years of bitter experience from its incarcerated authors. We do not lay claim as experts, nor do we possess credentials in the intellectual field, but we do possess practical knowledge in the fields of poverty and social ills.

We do not claim our recommendations have the only solution nor does it have an ultimate goal as such. The reasons for this being that the solution does not lie alone with the incarcerated native, nor the police, the courts, the rehabilitative agency, or society. The answer lies within a collective pooling of these people.

The reason the answer fails to surface is the negative attitude that society has toward not only the inmate but the whole correction process. It seems highly unlikely that society will ever be able to come to terms with these problems, and so with that in mind our brief does not have a conclusive goal. As long as these attitudes, double standards, etc. of society prevail then society itself will continue to supply our prisons with victims.

No, we do not suggest that our recommendations (if acted upon) will abolish incarceration of natives because under society's current standards we will always have some of our brothers and sisters down on skid-row or in prisons.

Despite the problems we will encounter in making our feelings heard we will not be discouraged. As President J.F. Kennedy often

said, "Some men see things as they are and ask why? I dream of things that never were and ask why not?" Our recommendations are only a small step towards our peoples problems.

Native Aspect of Parole

The Native inmates are now impatient with the verbal games that have been played in the areas of rehabilitation. We want the beginning of a real and purposeful dialogue with parole and correctional personnel in order to get on with the business of solving some of the most basic situations that the Native inmate encounters in the process of rehabilitation. When we enter into a dialogue, we wish to have the respect and the courtesy of the above mentioned personnel in their recognition that we are talking sense, that we have the intelligence and capacity to judge for ourselves what is good or bad for us. When we offer suggestions, we expect those suggestions to be given the attention they deserve, instead of the usual brush-off. Are you familiar with that brush-off? It goes: "Well boys, what you have to say is good and you must be commended for the intelligence you have shown through your extremely good presentation", and, subsequently, the inevitable, "but we know your problems and what should be done, and we're certain that you will be pleased with our carefully considered decisions."

In all respect to these carefully considered decisions, we respectfully submit that the present correctional system, which embodies the parole system, has unfortunately totally failed the incarcerated Native. In support of our submission we present this brief, in phased detail, to outline the reasons why the present system has failed. In addition we make strongly worded recommendations, not to alienate those who are in a position to help us, but, rather to escalate meaningful dialogue. We feel it is essential that the Native inmate participate in the development and implementation of programs that will affect him.

We want you to listen in a way that you have listened before to what we are saying, for we intend to ask you to help us in a way you have never helped us before.

Purpose of Parole

The purpose of parole should be to prepare and assist the Native inmate to cope courageously with his environment, however the present system serves only to confuse and alienate the Native inmate, and in general has had negative impact. In order to provide realistic parole plans for Native inmates, a thorough understanding of cultural background and life-style is necessary.

Parole is a method used by the whiteman to give people a chance to serve their time in the community rather than in prison. We know that this is not a technique that Native people can understand and respond to or can be helped by all that easily. We do know it is not used as often as it should be even with white inmates. For Native people it loses effect as we cannot understand the concept, and are generally unable to meet the parole requirements of reporting regularly, getting a steady job, and refraining from association with other ex-prisoners (often their family and friends) and certainly can not be expected to understand, respond to, or be helped by a parole system that is serviced by white parole officers who may have 150 men on their caseload and who demand nothing more than bi-weekly, ten minute interviews consisting of an exchange of greetings. This hypocritical system may help the parole officer meet

his weekly quota of interviews but it does nothing to help the Native person attempting to rehabilitate himself.

The Native has a highly developed perceptual pattern and learns quickly to identify the parole counsellor who is insincere, because he knows instinctively when the counsellor is incapable of communicating his message because it is irrelevant or alien. The Native takes his aspiration level from those around him and negative attitudes on the part of white parole workers have taken their toll.

As a conquered and powerless people too long denied the right to influence parole or prison policy, the Native has remained a non-entity in the correctional milieu. If correctional specialists were thoroughly familiar with the relevant culture of the Native, whether it be Cree, Blackfoot, etc., and willing to improvise experimental programs utilizing the recognized Native organizations, perhaps we may devise effective programs which will alleviate the present deplorable problem of Natives who comprise 60 to 80% (100% in some women institutions) of the inmate population, while in population comparison, the Native people only made up 2½% of the Canadian people.

The present parole system and institutional services to the Native portion of the prison population has been a dismal failure as evidenced by the bulk of the incarcerated Natives in the prisons and we feel that this government cannot afford to ignore that this is a special problem, which *deserves* special consideration. We find it rather distressing that the National Parole Service places special consideration when dealing with the Doukhobors of Canada. And yet are not even prepared to admit they have a special problem with the Natives of this country, contrary to the blatant evidence before them.

Who Can Help?

We do not believe that the National Parole Service, or for that matter, the white society as a whole, is capable of solving our problems on their own, and 100 years of experience has taught us that they do not have answers to the Native problem. We are not sure that we, ourselves, have all the solutions, but we are certain that we can communicate and work with our own people in a way no white authority can.

Alternatives

When we get "outside" our situation is a little better than behind bars, for we are faced with chronic unemployment, lack of education, and all the things that affect our people, even those who do not have a criminal record.

Through trial and error we have been able to at least organize some programs to alleviate this sad fact of social condition. We have in many of our institutions the facilities to learn a trade, educate ourselves, and in general take advantage of our penal surroundings. But we have learned that before a Native will attempt to do these things, he must first have the motivation that so many of our people lack. Where does the Native inmate get this motivation? or for that matter, any inmate, Native or White? Surely you're familiar with the lethargy that prison conditions produce in a man!

Take a walk through any prison and see in evidence the lack of motivation on the part of the inmates. We have found some solutions to this problem and have been successful in many cases to

promote a man to a better social awareness and help him stay out of prison.

You may not have heard of our successes as prison administrations are quick indeed to step forth and take the credit! The National Parole Service has been guilty of this attitude also, claiming that successful Native ex-inmates were a product of their programs. But this is simply not true in the majority of successful ex-inmates.

This change in Native ex-inmates' attitude took place from their association with the Native Brotherhood behind the walls of institutions, because probably for the first time in their lives they achieved an identity, and were encouraged by their peers to improve their self image. It is difficult to explain the psychology involved but as we've stated before the Native has a highly developed perceptual pattern and takes his aspiration level from those around him.

If the aspiration level of the group whom he identifies with is high, then his horizons will expand. And once a Native recognizes his identity he has no bitterness towards himself or other people, and can then begin to bring himself along the road to self fulfillment.

He will then take advantage of all that the institutions and society has to offer. This is what the "Native Brotherhood of Indian & Metis", in institutions is all about, and we can cite many successful examples who have been exposed to this group and they will tell you for themselves what helped them most, where everything else in the past failed.

What is the "Native Brotherhood"?

The Native Brotherhood of Indian & Metis is a self-supporting organization directed towards the Natives own rehabilitation. It abides by a constitution devised for the betterment of the Native inmate, not to mention the role it proposes to take for the betterment of all Canadian subjects, as outlined in Section 2, Article 1, of our constitution which reads: "AIMS AND PURPOSES".

The aims and purposes of the association shall be:

- (a) To promote understanding between Indian and Metis, and other Canadian subjects. To form a stronger Canadian Nation.
- (b) To help its members solve their problems through its affiliations with any recognized agency or organization set up by the Federal, or Municipal authorities for that purpose.
- (c) To improve the social and civil status and standards of Indians and Metis.
- (d) To serve as spokesman, mediator, when and where possible and permissible, for Indian and Metis who are not capable of speaking for themselves.

Many Penologists, Educators, Social Scientists, and Political leaders, who have been in a position to evaluate this organization, have expressed their overwhelming support in recognizing the rehabilitative value that this organization can not only play in the correctional field, but, perhaps more important, should be expanded to include parole, after care services, and community involvement.

The reason we emphasize these recognitions is to stress that with Federal co-operation towards expansion of these organizations, both

in the institutions and community, a valuable therapeutic tool for the purpose of rehabilitation could be utilized to escalate the goals of the whole correctional scope.

Therapeutic value:

Through the Native Brotherhood many of us incarcerated Natives have begun to develop a sense of our personal worth. We have witnessed the rebirth of our self-esteem, dignity and capacity to be responsible . . . not only to ourselves, but also to our Native people.

We have decided that we must make an all out effort to become involved in the Native Movement. The Native Brotherhood in institutions is waging a heroic struggle in undertaking what we truly know to be the only solution to the deplorable plight of the incarcerated Natives.

We are struggling to pull ourselves up by our bootstraps. We have decided that prisons will no longer be a place for the punishment of Natives, but that through the Native Brotherhood we will strive to make them into training grounds where Natives who are incarcerated can mould themselves into people who will in the future be a valuable asset to society.

We have begun by training our people in leadership programs which involve public speaking, Common sense Psychology, Journalism, Debate procedures, Parliamentary procedure, Human Relations, Life skills, Recreation, and our Native Culture.

We intend to show by example the strength of real Brotherhood. We intend to study our Native culture so we may never forget that we have much to be proud of. We intend never to forget to respect our traditions and our elders. We intend never to lose touch with the grass root people and the Native people who need help the most.

We have resolved to avoid the power struggles and petty bickering that have weakened the fabric of real Native Brotherhood. And perhaps more important, to escalate, promote and contribute to the essence of our main objective, as outlined in our constitution, of forming a stronger Canadian nation.

The Native Brotherhood of Indian and Metis, in the institutions of the western provinces, has been able to create an atmosphere of mutual respect and understanding which has produced positive results of which we can give many examples. We feel that the National Parole Service can utilize this valuable organization and recommend that they hire Native consultants and liaison officers to act as counsellors and parole representatives. Many Native People (inmates) have dedicated their future to work for the betterment of, not only the incarcerated Native, but all of our people. Many of these are self-educated, however, many do have the experience of incarceration and most important have the experience of cultural background and life style. Thus a more effective response is motivated.

The Native acknowledges the value of formalized studies and training in coping with the contemporary world, but we are not prepared to accept the argument that this social training is an established prerequisite for dealing with the problem of our people.

Correctional Services:

Correctional services must also be seen as an integral part of the total system of justice and, although this report or brief deals

primarily with the parole aspect, for one related field to be successful, they must all be successful.

The aims of the correctional services are two-fold:

1. To carry out the sentence of the court.
2. To take whatever course of action, consistent with the sentence of the court and the discretion allowed by law, is best calculated to return the individual offender to the community as a contributing member. Certain principals should be accepted as guides in fulfilling these aims.

The staff are the most important factor in any correctional system. New buildings and program will accomplish little unless they are competently staffed. On the other hand, competent staff will operate effectively even in outmoded facilities. Carefully selected and well trained career staff are the first priority in corrections.

A team approach involving staff from many disciplines is essential in a rehabilitation program. All staff must have an opportunity to participate in planning and implementing the rehabilitation program. The supervisor or correctional officer, whatever his title, is the person with whom many inmates spend most of the working day. These inmates may see the professional therapist for an hour at a time at quite long intervals. It follows that the supervisor or correctional officer is often the most important staff member in carrying out the rehabilitation aims of the institution. Therefore we stress the importance of hiring more Natives on staff at all levels including parole, after-care service, etc.

Inmate involvement:

Perhaps most important, the inmate should participate in the development and implementation of his rehabilitation plan. He must learn to take responsibility for his own decisions before he can resume his place in society. Practice in self-determination should begin as early in his correction career as possible.

It is when the offender himself and all staff who come in contact with him accept the possibility of rehabilitation and work together toward that goal in a situation where the authority pyramid is flattened that successful rehabilitation occurs. This is the essence of the "therapeutic community".

Community involvement:

The public should also be involved in corrections. The days of correctional services, particularly prisons, operating as closed shops are over. The taxpayers support these services. They wield the final political authority that determines correctional policies. They can perform some aspects of rehabilitation better than the professionals.

Re-assimilating the offender into the community is the last requirement of rehabilitation. Without that step, all that has gone before is lost. Only the community can take that step. The professional can help the process, but he can never substitute for the community.

Ex-Inmate involvement:

The participation of the ex-offender in corrections is growing in many countries, patterned on techniques developed by Alcoholics

Anonymous and self help groups such as outlined earlier in this report; in this case the Native Brotherhood.

The ex-offender has special understanding of the offender's problems. He may be more readily accepted by the offender. Also, his participation in the rehabilitation of the offender may be the final step in his own rehabilitation.

Supporting Facts

Unfortunately we are unable to give accurate statistics regarding the ratio of incarcerated Native and Metis, however, our brief is concerned for the institutions in the western provinces. In each of these institutions the rate is above reasonable and although studies such as "Indian and the Law", 1967, by the Canadian Correction Assn., whose statistic figures have since grown, such studies have, at the most gathered dust shelves. Following is an excerpt which hopefully will satisfy those who hold skeptical views towards our brief, particularly those whose minds register only the dollar and cent signs.

Regina Leader Post—June 17, 1970

OTTAWA (CP)—"The most startling figures at the criminology and corrections conference this week is the 80 percent relapse rate for men who go to federal prisons. Dozens of views are being heard about how the ideal correctional system should operate but there is unanimity on one point—the present system isn't ideal.

René Bertrand of Winnipeg's Community Welfare Planning Council put the relapse rate, which is 73% when provincial jails are included in this perspective. "If any other publicly financed institution, such as the public school for example, had a consistent failure rate approaching 73%, there would be public outcry and investigation."

"One may ask, how does the correction system escape notice?" Mr. Bertrand said \$333 million has been spent on the federal prison system in the last 12 years, rising from 15 million in 1959, to \$49 million in 1970. During the same period \$859 million was spent on the RCMP, \$77 million on federal courts, \$12 million on parole services, \$3 million on probation. Yet the system had a 73% failure rate. Maurice Gauthier, director of Correctional Service in Quebec said the atmosphere of prisons had changed for the better since 1950, and an atmosphere favourable to treatment had been created. The only trouble was, there wasn't much in the line of treatment. "The present system has at the most yielded good inmates, but has not yet prepared good citizens."

Mervyn Davis, executive director of the John Howard Society of B.C., said the beginning of sensible crime control methods is modified custody, day parole, work release, outside passes, and parole. Mr. Davis maintained that rehabilitation can't be achieved in a prison."

These figures speak for themselves and if society fails to understand or recognize what they stand for, then society itself is paving the way for conditions to get worse. If society doesn't want to finance our recommendations, which are coming from the victims of that failure system, then how does it account for the \$333

million spent on a system that is failing? Any failure anticipations from society towards our recommendations will be fulfilled because we do not suggest 100% success. However it just might be possible that our recommendations will be less costly, financially and human potentially, and perhaps even a better success rate than the present relapse rate.

Every correctional program should be under constant review to test its effectiveness in accomplishing its aims and to seek more effective ways of doing things. A search for more economical ways of accomplishing equal results should be included. If two programs are equally effective, the less expensive should be adopted.

Such planned review requires many things. One is an efficient system of records so that an accurate history of an inmate's progress will be available.

Solutions to the Offender of Native Ancestry

There can be no doubt that any final answer to the problem of Native Offenders must await a solution to the general social and economical conditions under which the Native people live. However, while remedies to the larger problem are being sought, the correctional services, including parole, must seek partial answers within the scope of their own responsibilities. Such answers would in themselves represent a contribution to the wider solution. In fact, it may be possible within the corrections field to develop techniques in meeting the problems of the Native people that could be applied in wider areas.

There seems to be a blockage to effective understanding and communication between non-Native correctional staffs and Native offenders. This is not surprising. A similar lack of understanding exists in most mixed Native and non-Native environments.

The most practical and promising approach to Native offenders seems to be the participation by members of the broader Native community in rehabilitation programs. This includes hiring Native staff for probation, training schools, prisons, parole and after-care. It would also include the involvement of volunteers from the Native community in these programs. The use of volunteers is discussed elsewhere in this report such as implementation of organizations such as the Native Brotherhood. It is sufficient here to stress the urgency of including Native volunteers and Native ex-offenders in the scheme.

The participation of the ex-offender in the corrections field has been mentioned earlier in this brief. Such opportunities may be particularly great in relation to Native ex-offenders since so many young Natives are involved in what might be called social offences rather than more serious forms of crime. These young Native ex-offenders might also become involved in programs related to the more general social and economic problems faced by the Native people.

One special problem concerns the Native court workers. They are members of the Native community employed to attend court and assist Natives accused, to understand what is involved, to obtain legal counsel when indicated, and to interpret the offender's situation to the court. A worker of this kind has been employed by the Canadian Native Friendship Centre in Edmonton for several years with considerable success.

However, in all respect to what measure of success has been attained since the inception of this program, the fact remains that the Native recidivist rate has done nothing but increase. It seems safe to conclude that obviously "something" is missing. Which is not to say that the program is wrong! It simply means that on the basis of understanding and communication, more encouragement should be given to the hiring of Native ex-offenders in this area.

Another program that will help is a course in schools, supplemented by adult education courses through the adult education services, to help the Native people understand the criminal law, its underlying principals, what happens when a charge is laid and what the individual can, and should, do to defend himself. Canadian law is strange to the Native people and it has never been interpreted to them. No man respects what he does not understand. The Native is no exception. A program to interpret the law to youth in schools is suggested; the need seems particularly acute for Native youth.

Special efforts should be made in both juvenile and adult institutions to develop vocational training of particular interest to Natives. Much of present vocational training has limited application for Natives.

Alternatives to institutional care in dealing with Native offenders should be given particular attention. The training schools have little meaning to many Native children, particularly those from more isolated areas. The prisons have little meaning to adult Natives.

Another important area that should be brought to light. It appears that many Natives find it easier to accept the rules of modern society as a group rather than as individuals. As previously mentioned in this brief, the Native's aspiration level is achieved from those around him. The individual Native offender is not liable to understand and accept what he is exposed to during rehabilitation. If the individual is part of a group that is prepared to make a special effort, such as the Native Brotherhood, the individual will go along. This suggests greater use of group techniques in rehabilitation programs for Natives, including parole programs.

In considering the following recommendations, based upon facts, figures and years of bitter experience, we urge your most carefully considerations of the waste of human resources and need for social reform. It must be recognized that these recommendations are of no avail until society addresses themselves to the social ills that breed incarceration.

Recommendations

We make the following recommendations:

1. We recommend that the Canadian Penitentiary Service and National Parole Service do admit and recognize that they have a special problem, which deserves special consideration, in dealing with incarcerated Natives.
2. We recommend that the Inquiry of the Senate Standing Committee on Legal and Constitutional Affairs be expanded to include all phases of the correctional process. As

- one related field of corrections to be successful, they must all be successful.
3. We recommend that the Minister of Justice provide funds to the recognized Native organizations of this country to work out ways in which the Native organizations can begin meeting the problems of their own people in their own way, with the co-operation, and in conjunction with the Federal Government, including the National Parole Service.
 4. We recommend that the Canadian Penitentiary Service and National Parole Service utilize and help expand the Native Brotherhood, both behind the walls of institutions, and into the community, for the purpose of its therapeutic value towards rehabilitation.
 5. We recommend that all levels of government, and National Parole service, make an effort to provide worthy confrontations with the Native inmate to better understand how our own people feel we can best be helped.
 6. We recommend the hiring of experienced Native ex-inmates at all levels of the correctional process: National Parole Service, Prison service, Probation, Court Worker, Training schools, and after-care agencies.
 7. We recommend the right to have Native people on the National Parole Board, if for no other reason than Native people constitute a majority of the inmates who are in the institutions.
 8. We recommend the opportunity to provide federal financially assisted parole services that make sense, and can be understood by Native people who are on parole.
 9. We recommend that the federal government make an effort to involve and educate the public on the subject of corrections, utilizing the news media, and various other means too numerous to mention. And keep them informed on pertinent issues.
 10. We recommend that the federal government make efforts to induce Native community involvement in the correction field.
 11. We recommend a course in schools, supplemented by adult education services and courses, to help Native people understand the criminal law.
 12. We recommend that special effort be made in both juvenile and adult institutions to develop vocational training of particular interest to Natives, and in accordance with cultural background and life-style.
 13. We recommend that the authority pyramid be flattened in all fields of correction.
 14. We recommend that discussions be opened between the federal government, private industries, and organized labour, on prison industries and the disposal of their products.
 15. We recommend that the continued assistance of the Division of Alcoholism to the Department of Health be sought in planning and conducting a program for alcoholic Native inmates.
 16. We recommend that where Natives are concerned, responsibility of parole counselling be given to responsible Native organizations, and include ex-inmates. And that funds be allotted to these organizations for that purpose.
 17. We recommend that the Minister of Indian Affairs and his department become more actively and meaningfully involved in the rehabilitation process of incarcerated Natives.
 18. We recommend very strongly that Native organizations, in all levels, become actively involved before, during and after release of the incarcerated Natives.
 19. We recommend that a committee be formed consisting of ex-inmates, and professional correction personnel, to keep under constant review and seek more effective innovations to deal with the problems related to corrections.

Conclusion

We were particularly disturbed that the Honourable Senators totally ignored the Native aspect in their recent debate on the subject of parole in Canada. We find it difficult to believe that government officials are ignorant to the plight of our people in prisons, and perhaps it is these things which plant the seeds of skepticism and distrust in our hearts, and relate the government as (Wapiskoweah) "who said one thing and did another!"

There are many in Canada who believe that "The Just Society" was a catchy but insincere slogan. We believe you have, in this particular instance, an opportunity to let the Native people know that you are prepared to do more than just say it at election times, In that sense we ourselves shall be the judges if you do not take action.

Recently the Native Council of Canada presented a brief to the Honourable John Turner and the Honourable J. P. Goyer as a result of a workshop held last December 14, 15, 16, 1971, to bring this very serious situation to the attention of the government. We have chosen to include excerpts from this brief in order to convey our feelings on this matter.

"The Native people of Canada are asking their government to do two things:

1. To recognize that the problem of correctional services to Native people is desperate and that the government has been unable to cope with it.
2. That they are willing to give the Native organizations the funds and the responsibility to tackle this problem.

It is not possible at this point to place a dollar value on what the Native organizations want and need to do a proper job. It is possible to say that the federal government through its Department of Indian Affairs, Health and Welfare, Justice and Solicitor-General have spent hundreds of millions of dollars without achieving the kind of success most Canadians hoped for. We, the Native people of Canada, ask for financial assistance from you. It is our belief that for a fraction of the cost of your present programs that you owe it to the Canadian taxpayer to give us a chance to help our own people to help themselves.

If the Government of Canada is not prepared to listen to us we have no alternative but to take it to the people of the country. We are not sure how we could do this but we will attempt to use the press and radio and television to enlist support against a government that is inhumane, insensitive and arrogant. We think that most Canadians will support us in our effort to be responsible leaders working for a just cause. In the event that they will not, we can only warn the Ministers, the media and the Canadian public that confrontations between the Natives and other Canadians will increase and that violence may occur not because we encourage it but because your indifference will make it a necessary tool for social change in this country."

The inadequacies have not all been on the side of the government, and our people are prepared to admit this but our purpose is not to assign blame, but to describe these inadequacies and failures (wherever the fault may lie) and propose a way of correcting them.

We close this brief with our Indian Prayer, a prayer for the hope of a better future for all Canadians:

INDIAN PRAYER

"Oh Great Spirit, whose voice I hear in the winds, whose breath gives life to all; hear me. Make me wise so that I may know all the things that you have taught my people, The lessons you have hid under every leaf and rock. I come before you one of your many children, I seek strength not to be superior to my brothers But to be able to fight my greatest enemy . . . myself! "

On behalf of our incarcerated Native Brothers, we urge your serious consideration of the views set forth and trust we have made a worthwhile contribution to your long overdue enquiry. We look forward to discussing the problem with you at a convenient time and place.

All of which is very respectfully submitted.

Robert A. Callihoo
Robert A. Chalifoux

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Drumheller, Alberta

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FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT

1972

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 13

WEDNESDAY, JUNE 28, 1972

Thirteenth Proceedings on the examination of the parole system
in Canada

(Witnesses and Appendix—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue	Laird
Buckwold	Lang
Burchill	Langlois
Choquette	Lapointe
Croll	MacDonald
Eudes	*Martin
Everett	McGrand
Fergusson	McIlraith
*Flynn	Prowse
Fournier (<i>de Lanaudière</i>)	Quart
Goldenberg	Sullivan
Gouin	Thompson
Haig	Walker
Hastings	White
Hayden	Williams
	Yuzyk

*Ex Officio Members
(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,

Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 28, 1972.

(22)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators Prowse (*Chairman*), Burchill, Eudes, Haig, Hastings, Laird, Lapointe and McGrand. (8)

In attendance: Mr. Réal Jubinville, Executive Director (Examination of the parole system in Canada); Mr. Patrick Doherty, Special Research Assistant.

The Committee continued its examination of the parole system in Canada.

The following witnesses, representing the John Howard Society of Canada, were heard by the Committee:

Mr. G. Lockwood, Winnipeg,
President.

Mr. F.G.P. Lewis, Vancouver,
Past President.

Mr. A.M. Kirkpatrick, Toronto,
Executive Director.

On Motion of the Honourable Senator Prowse it was Resolved to include the brief presented to the Committee by the John Howard Society of Canada in this day's proceedings. It is printed as the Appendix.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, June 28, 1972.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator J. Harper Prowse (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us this morning representatives of the John Howard Society. On my immediate left is Mr. George Lockwood of Winnipeg, the president of the society; on my right, Mr. Frank Lewis, the immediate past president, who was president at the time the brief was prepared; and, on my far right, Mr. A.M. Kirkpatrick, the executive director of the society.

Honourable senators have had the brief for some time, and I presume they have read it. I will entertain a motion that it be added as an appendix to today's record.

Hon. Senators: Agreed.

(*For text of brief, see Appendix p. 13:21*)

The Chairman: Would one of you gentlemen care to make some introductory remarks? Then we will proceed with questioning.

Mr. G. Lockwood, President, John Howard Society of Canada: Honourable senators, I will make a very brief opening statement. I know that you have read the brief, and we will all be delighted to try to answer your questions. You realize, of course, that Mr. Lewis and I are laymen, and Mr. Kirkpatrick is the expert, so that many of your questions will be more profitably directed to Mr. Kirkpatrick. I assume that he will be the man to answer most of them.

Our national society has been in existence for approximately 10 years, and we have representatives from eight of the 10 provinces of Canada. The board meets in Ottawa twice a year, and on those occasions we usually have two or three representatives present from each of the provincial societies. The provincial societies are, of course, run by boards of lay members, and the professional work in the field is in the main done by staffs of professionally-trained social workers.

Of course, the John Howard Society of Canada is interested in the whole field of after care. We have committees on law reform, workers working in the penitentiaries, and those working with people who are released on parole or who are about to be released on parole.

We are now open to questions.

Senator Laird: Before we go any further, Mr. Chairman, there is one thing that has not been touched on, which always interests me. It is the effect of the present drug situation on the problems arising out of parole. You have touched on the liquor problem and the abstinence rule, but there is nothing said in your brief about drugs, how you contend with them and what effect they have in connection with your work. Would one of you care to comment on that?

The Chairman: Perhaps, Senator Laird, you could break that down into the two types of drugs.

Senator Laird: All right; let us break it down. Let us say marijuana is a soft drug and heroin is a hard drug.

Mr. A.M. Kirkpatrick, Executive Director, John Howard Society of Canada: There is no specific abstinence clause in relationship to drugs, that I know of—I am subject to correction from the Director of the Parole Board who is sitting behind you—so this becomes simply one of the problems that have to be dealt with in supervision. The problem with the addict who is actually using is, of course, that he is usually engaged in other criminal activity in order to support his habit. Therefore he becomes a more risky parolee, from that point of view, than most. I would suggest that in most cases he would receive more intensive supervision than usual.

Beyond that, I am not sure that there is much that I can say. The marijuana addicts are coming out from the institutions, and I think we discern a different attitude on their part, in that they feel they really have not committed any crime, but that society was wrong and they were right. So it is a little more difficult to try to work with them on a philosophical basis in regard to the society's mores, the rules of the society, than with the average criminal offender who is prepared to say, "Yes, I did it and I knew it was wrong."

Senator Laird: The whole problem seems to me, then, to revolve around the general problem of supervision. Let us take the case of a parolee or a person who still comes to you after his time has run out, as I understand from your brief does happen. I would like to know just precisely the mechanics of your supervision. For example, do you expect these people to come to you, or do you send field representatives out to see them without an announcement? What is your system?

Mr. Kirkpatrick: The system really is completely individualized, as far as the work of our society is concerned. The parolee is instructed to report to the office of the society or the Parole Service within three days, which gives him the weekend in order to make himself known to the parole supervisor who will be working with him.

The whole matter becomes individualized from that point on, and he may be given very intensive supervision at the start. He usually is, and this may be gradually relaxed. We do not visit on the job unless the employer knows that the parolee is, in fact, a parolee and has a criminal record, because that would reveal him to the employer. But where we have obtained a job for the parolee, or with him, and the employer knows, this is ideal, because then we can establish a good working relationship with the employer and help him in the supervision of the parolee on the job, with many of the problems which do come up in their first employment.

As far as visiting homes is concerned, this is done when there seems to be a necessity to do so. Quite often there is a problem of marital discord which may have existed before the man went to prison, and which may have been exacerbated during the time of his imprisonment. So where this seems to be desirable in the interests of matrimonial reconciliation, this will be done. On the other hand, it may well be that the wife and family will be invited to come down with the man to the office of the society. I have quite often seen mothers with babies and small children in the office of the society. In fact, in the Toronto office they have a set of toys that they keep for the children, so that when they come with their mothers they are not fretting and there is some attraction for them. I am not sure if that fully answers your question.

Senator Laird: It brings up an issue that always seems to me to be vital to the whole setup of parole, namely, the matter of employment. What does your society do about helping a parolee to get employment?

Mr. Kirkpatrick: Well, we have in my society—when I say “my society,” I must say that I am speaking now on behalf of a number of societies right across the country, and their practices would, of course, differ; but in general we all, I think, have quite a number of contacts with employers that we have built up over the years. I know that in some offices, for example, they keep card indexes of employers and know which ones have vacancies. Employers call. Some offices have workers, one of whose duties is to go out and talk to employers and try to sell them the idea of taking ex-inmates who are suitable for their employment. I think most of us do not attempt to sell ex-inmates on a sympathetic basis. We try to sell them on a realistic basis, that, “You have this job advertised and we have a man we think can present the skills to you that you need, and it is a matter of your giving him a chance.”

In other offices there has been an employment training group in operation where the men who are just out and seeking employment will be taught, really taught, how to read the want ads for employment, how to use the telephone, and encouraged to use the telephone right there and apply, ask if the job is available and make an appointment to go out. Sometimes we will go with him; often we drive him out to the place of employment. We will role-play with one another in these groups, where men will take the role of an employer and start quizzing the fellow about his criminal record; the other will try to figure out how to answer this kind of question. There is a big avenue of help available here.

However, the main avenue is through the Canada Manpower services, because they have the jobs if there are any. We have a liaison with them and relate our men to their counsellors as

personally as we can, although it is a little difficult under the present Canada Manpower system to do this, since the old special services units have been disbanded. They also have a system whereby their representatives, their counsellors, interview men in prison before they are released, just as we do. They refer the men to the district office where they are going, so there is a counsellor there who knows about their needs, and who will take on some aspects of the rehabilitation process and relate it specifically to employment. They are the main source of employability.

Apart from all that, there has been the general interpretation of the needs of ex-inmates for employment, which has gone on over the years by our society, and indeed by many people in the correctional field, and in the government services as well. We have all been trying to interpret that ex-inmates are people, that they are human beings and have social needs, and that if they are to forsake the criminal path they have been on they must have an opportunity for social readjustment through employment so that they can survive. This is fundamental. This interpretation has been going on constantly over the years through speeches, movies, film scripts, lectures, articles, all kinds of use of the media to that end.

Mr. F.G.P. Lewis, Past President, John Howard Society of Canada: Perhaps I might add one thing on liaison with Canada Manpower. As Mr. Kirkpatrick has said, our workers everywhere have endeavoured to develop that, and from my visits with our societies across the country I know that in a number of places there are executives from Canada Manpower on the boards of local John Howard Societies. In my own Province of British Columbia the senior executive for the Pacific Region of Canada Manpower is a director, as is another one of his associates, so there are two Manpower executives in British Columbia on the board of the John Howard Society of British Columbia. The situation is similar in other parts of the country.

Senator Laird: That is excellent. These parolees have emotional problems, whether they arise out of employment, marital problems or otherwise. When the St. Leonard's Society was before us on June 15 they said they had a 24-hour, around-the-clock service for persons who felt they needed help. This would presumably be an emotional problem, which could happen at any hour of the day or night. What do you people do about that situation?

Mr. Kirkpatrick: We are available. Our offices are open in the evenings at least two or three nights in most places, where men who are working can and do come down for interview. In most cases the parolee has the home telephone number of his parole supervisor and can contact him, and quite often does, in the middle of the night about problem situations he might find himself in. However, part of the problem is that you cannot really do a “surveillance” job on these men. They have to learn how to operate independently. That is part of their whole experience in restoration to society, that they have to learn how to live in society in an economically and socially competitive world, which they have not been used to in prison. They must be given a considerable amount of freedom to test themselves and to make their own way back into society. However, we are available to them on a very broad basis.

Senator Laird: For example, at weekends, when a lot of problems arise?

Mr. Kirkpatrick: Yes, if our worker is there. If not, the man would get hold of somebody else in the society.

Senator Laird: Can he do that readily? That is what I am trying to get at. Supposing the worker is not available, can he readily get at somebody in the society? For example, are your offices open at weekends?

Mr. Kirkpatrick: No.

Senator Laird: Then how would a person get at your society?

Mr. Kirkpatrick: He would know other workers and would probably contact one of them, I would think. I believe you are making the assumption that this is what is required, and I do not think it is. If the man was faced with an emergency situation he would contact one of us, or he might go to the parole service office and contact a Parole Service officer. Usually there is not very much that comes up in this emergency role. It seems as though it is an important factor, but in actual fact we do not get too many of these kinds of calls.

Senator McGrand: I should like to follow up Senator Laird's question. How successful have the parolees been in the jobs that you have secured for them? What percentage of them have failed to be successful employees?

Mr. Kirkpatrick: I cannot specifically answer that in percentages. I do not know of any study that has been made. We have not made a study of that nature. I have referred in the brief to a study of all our offenders, in which we found that 40 per cent have not had a conviction within two years. However, that was generalized; it was not in relation to employment.

I think I might be able to help by saying this. In the first instance, many of the men we have are not really ready for employment; they may look ready physically, but emotionally they are still storm-tossed and are going through a period of readjustment. Quite frequently, jobs will be found for these men, and everybody says, "That is the answer. Get a job; you have got everything fixed up." But quite frequently these men will not be able to hold that job. A foreman will ask them to do something; they will resent it and blow off steam, and then they are fired. They have difficulty in keeping the regular hours in employment and in working the full day that is required in employment. This is changing in the prisons now. There is a concentrated effort being made to provide a fuller work day in the prisons and a more accelerated pace than has been the case in the past. But this is a very complicated and difficult question; it is improving and it will further improve, I am sure. The fact of the matter is that men are not really suited, in many instances, to employment when they come out. They may fail in the first one or two jobs before they are really emotionally ready and stable enough to hold a job down.

Senator McGrand: That is what I wanted to know. I can understand that when a man comes out and gets his first job he is not going to be too successful in employment.

Mr. Kirkpatrick: He may not be.

Senator McGrand: He may not be, but as time goes by he is going to fit himself into the job. Has that been your experience?

Mr. Kirkpatrick: This has been my experience. Parolees obviously make very good employees. If I may refer you to that report, the parole study of earnings, on page 19, you will see that most of the parolees, 78 per cent, were working at the particular time of the study, and that their average income was \$412 per month. Of those who were not working, it was not necessarily because they were unemployed. Some of them were just out and had not had a chance to get employment; others may have been in between jobs. I think this is a pretty good record for the community at large, let alone for parolees, who might be expected to have difficulty in getting employment and, in fact, do have and holding it.

Senator McGrand: I just have one more question, following up on that. If a parolee goes out and gets into trouble, the whole country knows about it—"ex-convict goes berserk again"—and it gives parole a bad name. But you say that 80 per cent of the parolees have been successful in returning to society; about 20 per cent of the parolees have been failures. Could you give me some idea—

Mr. Kirkpatrick: I am sorry, I am not aware of those figures.

Senator McGrand: It is on the second page: "That means that over a period of 15 years, 80.3 per cent of the parolees under the supervision of our society, completed successfully their parole."

Senator Haig: What page are you reading from?

Senator McGrand: Page 1.

Mr. Kirkpatrick: I am afraid you do not have my brief, sir.

Senator Laird: I got the wrong brief too.

Senator McGrand: Well, 80 per cent, that is what I understand.

Mr. Kirkpatrick: That is not my statement.

Senator Hastings: That is tomorrow's brief.

Senator McGrand: Then I have got the wrong brief.

The Chairman: We are going to get better answers this way!

Senator McGrand: Is this true, that about 80 per cent of parolees do well on parole?

Mr. Kirkpatrick: I have only the figures for 1969; I have not any subsequent reports, though I understand that Dr. Ciale has been in possession of later physical data, which is not published yet, and has given you figures. I would say that for 1969 probably about 85 per cent of the men who were on parole completed their parole without a further conviction. May I be corrected by the executive director of the Parole Service? Was that the figure for that period?

Mr. F. P. Miller, Executive Director, Parole Service Administration, National Parole Board: If you compare the number of releases with the number of failures during the same time period—how many completed over a period of time later on is another thing—

Mr. Kirkpatrick: I am coming to that; but the figure is correct for the actual completion of parole?

Mr. Miller: The only thing that can be given the year after is the number of people who are put back in proportion to the number of people who are put out. You may have a 15 per cent figure that way.

Mr. Kirkpatrick: The actual result of the survey that we made is on page 19. It was made by Mr. Andrew of the School of Social Work in Toronto for a Master of Social Work degree. He found that 39.75 per cent of the 156 studied had no record of criminal conviction during the period of 18 to 24 months after their release. This was a month-by-month study, for two years—not just two years in total, but January releases, going for two years, February releases, going for two years, March releases, going for two years, and so forth. In that way, every man had about 18 months to two years to fail. We felt that was a pretty successful thing. That was for all releasees, not just parolees. So the figure for parolees, if we had made that study, would undoubtedly have been higher. I do not know just what it might have been, but it might have been 60 or 70 per cent.

Senator Hastings: Dr. Ciale said it was about 22 to 30 per cent over the long period. Would you agree with that figure?

Mr. Kirkpatrick: Failures?

Senator Hastings: Yes, failures?

The Chairman: He said that one about 80 per cent of releasees, it ran about 50 per cent recidivism over a period of five years, did it not? And with parolees it was about 60 per cent, which gave us a 20 per cent edge in favour of parolees. That is as I recall it.

Mr. Kirkpatrick: That is pretty involved to throw at me out of the blue. I am not aware of Dr. Ciale's data and we have no data on that, except this one study which I have shown you. If you compare it with probation, it was found by the Ontario Probation Department, where a study was made a short time ago, that approximately 15 per cent failed to complete their probation period successfully and another 15 per cent were convicted again within a matter of a year; so that their "success" rate over a period of a year following probation was about 70 per cent. I would suspect that parole, which is also a selected group of inmates, would not be too different from that, but I have not data to support that view.

Senator Hastings: Parole with probation, those are ordinary people who go straight out on probation. They are not kept in; they do not go to prison.

Mr. Kirkpatrick: I would suspect that the rate of parole would not be unlike that. I would guess it would be around 70 per cent, but I have no data to support that.

Senator McGrand: Why I asked you the question is this: In your experience, what is the chief factor? Of course there are numerous factors. A man may get drunk or be emotionally upset; or he may run into trouble in his home, or he may have no income, no money in his pocket. That takes him back into crime. How would you list them in priority relating to the causes of dropping back from your expectation? When the parolee is released he is quite confident that he will handle himself properly, and those who release him are also confident so all are disappointed.

Mr. Kirkpatrick: I am afraid that I could not generalize, senator. It would be wonderful if we were able to do this, but in actual fact, as I mentioned to Senator Laird, the whole subject has to be individualized. Every man has a different type of problem which must be given attention at different times in the man's experience. Therefore, the different symptoms to which you refer may occur at different times in the experience of different men. They must be treated as they become important and form the substance on which we can work with individuals. The problems arise out of the fabric with which we have to build new lives. It is as we get at the problem situations and behind the symptoms, such as drunkenness, to what the real problems are that we are able to be of some help to a man in finding his way.

I could not generalize; it must be individualized. If we could find some panacea for crime, some single cause, we would be able to attack it in a direct manner. Crime, however, is a broad social problem over the whole spectrum of many aspects of our lives and, unfortunately, there is no single solution.

Senator Lapointe: Do you consider yours to be the best private agency in Canada?

Mr. Kirkpatrick: I do not think I need answer that question. No, but to be quite serious, we represent eight John Howard Societies, which we consider do very good work. They are in different sections of the country. There undoubtedly may be different standards of work in those sections and in various parts of any one province. I would certainly say that the Elizabeth Fry Society carries out excellent work. I do not wish to put it on a comparative basis, if you will excuse me.

Senator Hastings: You say you are a federation of societies in eight provinces?

Mr. Kirkpatrick: That is correct.

Senator Hastings: How are you funded?

Mr. Kirkpatrick: Mostly by community chests.

Senator Hastings: This is the John Howard Society of Canada. How is it funded?

Mr. Kirkpatrick: By contributions from the member societies.

Senator Hastings: What percentage comes from the member societies and what percentage from government?

Mr. Kirkpatrick: None directly from government.

Senator Hastings: You receive no grants?

Mr. Kirkpatrick: No.

Mr. Lewis: Our eight-member societies last year had budgets of approximately \$1.5 million. When figures were collected for the Fauteux Committee in the mid-1950's the total expenditure of all private after-care agencies in the country was approximately \$125,000. That gives an idea of the great increase in the past 15 years. Approximately half of the \$1.5 million is received from community chests, United Appeal and Red Feather drives. One-half million is received from the federal government in relation to the parole agreement and in the form of grants for our services at the penitentiaries. The balance is comprised of grants from provincial or municipal governments. The funding of the John Howard Society of Canada is provided by the member agencies in proportion to their incomes, so as to complete our national budget.

Senator Hastings: How is the local John Howard Society funded in the city of Vancouver?

Mr. Lewis: The John Howard Society of British Columbia participates in a number of United Appeals and receives grants from a number of lower mainland municipalities. In addition it receives funds from the federal government for parole supervision and the attendance of workers at the British Columbia penitentiary at Matsqui, Agassiz Mountain Prison and the work camp and at the William Head institution on Vancouver Island. The situation is quite similar in Alberta.

Senator Hastings: Would you say the bulk of your financing still comes from the private sector?

Mr. Lewis: Up to 50 per cent, throughout the country.

Senator Hastings: Are you in danger of becoming another government agency?

Mr. Lewis: Well, Senator Hastings, this brief puts forth an independent point of view. We have always been very conscious of the fact that, although we do not consider our society to be the best in the country, we consider it to be the spokesman of the community with respect to correctional matters. The John Howard Society is expected to have an opinion on correctional matters as they arise, and to the extent that it is possible we seek to achieve that.

To comment further, we maintain very close fraternal relations with the association in Quebec, the Federation of after-care Agencies. In fact, our executive committee met jointly with the federation in Quebec City last week. They have perused this brief, and we understand that their submission to the committee will be somewhat similar.

Senator Burchill: In the Province of New Brunswick the John Howard Society is very prominent and highly regarded. In fact, we do not hear of any other societies or associations carrying out similar work. With respect to their finances, however, I presume their efforts are confined to the amount of voluntary gifts they receive in such a province as New Brunswick.

Mr. Lewis: I attended the annual meeting of the John Howard Society of New Brunswick during the month. While they are in receipt of federal and provincial funds, my quick recollection is that they did not receive the hoped for support from local community chests. This is a problem with which agencies all across the country have to wrestle. I believe that there is in that society a problem with regard to inadequate local funding from the community.

Senator Laird: What is your opinion of half-way houses?

Mr. Kirkpatrick: Our feeling is that they have a very definite place. Some of our societies organize and run half-way houses.

Mr. Lewis: There are a number also in relation to native people.

Mr. Kirkpatrick: That is in British Columbia.

Mr. Lewis: Yes, and in other parts.

Mr. Kirkpatrick: They can handle small groups of men. We deal with thousands, but they with tens.

Senator Laird: But they do have a place?

Mr. Kirkpatrick: Oh, yes.

Mr. Lewis: Some put them forward as a sovereign remedy.

Mr. Kirkpatrick: They are not a panacea for anything, any more than anything else is. There is no panacea. That view, however, has been advanced, but it is not the case.

The Chairman: In other words, you have a broad spectrum of problems which require a broad spectrum of services.

Mr. Kirkpatrick: That is correct. They are one of the correctional services which can be very helpful.

Senator Lapointe: Are you interested also in women?

Mr. Kirkpatrick: Where there is no Elizabeth Fry Society, we work with women. We have encouraged the founding of Elizabeth Fry Societies. This is particularly true in British Columbia, where there is now an independent branch of the Elizabeth Fry Society which began with the John Howard Society. The same is true in Hamilton, Ontario, where the John Howard Society fostered the introduction of an Elizabeth Fry Society, which is now operating in close co-operation with us.

Mr. Lockwood: I might add that in the Province of Manitoba our local society is the John Howard and Elizabeth Fry Society of Manitoba, and we definitely are interested in and do work with women.

Mr. Lewis: I might also add that this national society had given what formal assistance it could to the Elizabeth Fry people in forming a national group. We gave them a copy of our constitution and the benefit of some pontificating on some organizational problems and matters of that sort.

Senator Lapointe: Do you have a John Howard Society in Quebec for English-speaking people?

Mr. Lewis: Yes; In Montreal City there is a John Howard Society of Quebec. There used to be, in addition, a Catholic service for English-speaking people, but by amalgamation the John Howard Society of Quebec now deals with all English-speaking cases in Montreal. The SORS deals with French language cases.

Senator Lapointe: What does SORS mean?

Mr. Lockwood: Société d'orientation et de réhabilitation sociale. That is the French language group in Montreal. We do work on a very amicable basis with both the English language and the French language groups. Within the past week we have, indeed, met with them. We met with them in Quebec City on the occasion of the annual meeting of the Society for Criminology and Correction. As was mentioned earlier, they have a copy of the brief that was submitted to this committee.

Senator Lapointe: Did they approve it? Were they in accord with it?

Mr. Lockwood: Yes, they were very enthusiastic about it when we spoke to them last Friday.

Senator Lapointe: There was a very interesting program on the CBC French network last night about the parole system, which lasted for one hour. One of the parolees said there were ten conditions for the release of a parolee. For example, he was not to drink alcohol, in the case of those who are alcoholics; he was not to get married during that time without telling the board, and not to buy a car. But the parolee said there were many ways of circumventing, of getting around, this condition, because they could have someone else buy the car in their name.

Mr. Lewis: But they could not have someone else get married for them!

Senator Lapointe: That is right. Does it sometimes happen that parolees got involved in buying a car and not pay for it?

Mr. Kirkpatrick: There are several conditions. If you would like to get one, I am sure that this document "A Guide for Parole Supervisors," could be made available to senators. It states concisely the conditions you are speaking of. Condition No. 5 is not an absolute condition. It says:

To obtain approval from the representative of the National Parole Board, through the parole supervisor before:

- (a) purchasing of motor vehicle;
- (b) incurring debts by borrowing money or instalment buying;
- (c) assuming additional responsibilities, such as marrying;
- (d) owning or carrying fire-arms or other weapons.

It does not say you cannot do that, but his personal and financial situation must be such that he can assume these responsibilities

without the danger that he will go out and rob a bank to pay for them. So it is not, in fact, a denial. It is simply a matter that he has to indicate that he is able to assume these responsibilities.

Senator Hastings: Which are reasonable.

Mr. Kirkpatrick: Yes, I think so. We comment about conditions in the brief. I will not go into that unless you want me to. We feel that the conditions are reasonable. They are on pages 21 and 22.

This gives an opportunity for the supervisor to discuss objective factors. It may be that the supervisor is coming to the conclusion that the total behaviour pattern of this man is going wrong. But this is hard to explain to a human being, whereas he can take these conditions and say, "But now look, here's this, what about it? Let us talk about this." Then, from that, he can go into other things. So it gives you something to hang a discussion on, that the man can understand. It is objective; it is not a subjective opinion that you are forming about the man. It is part of parole supervision. The conditions can be very helpful, and controls are necessary in parole supervision.

Senator Lapointe: A moment ago you said that many parolees were earning a very good salary which represented revenue for the country. Why do you not consider a saving of custodial costs as a function of parole?

Mr. Kirkpatrick: Because I do not believe it is. It happens incidentally that it is cheaper to supervise a man on the street. I suppose today the figure would be around \$1,000. A couple of years ago it was \$750, as stated in *Hansard*. It probably costs \$10,000 to keep a man in a penitentiary. So there is a saving. However, this is not a function of parole; it is incidental. The function of parole is to release a man at the time appropriate to his training program, his attitudes, his hopes, his abilities, his readiness for restoration to the community. The problem is to assess these factors and to determine the right time for all these conditions to be met for him to be released. Because it is an incidental saving, that is not justification, in my opinion, for parole.

Senator Lapointe: Do you consider that murderers should have parole too?

Mr. Kirkpatrick: I have found them to be some of the best parolees we have ever had. Murderers have the lowest recidivous rate of any group, statistically, right across the world. Murderers are usually—I am not talking about the commercial offender, the hired gunman—one-shot people. They remove the object that is frustrating, their lust, greed or avarice, and they usually do not ever kill again. There is only one man who committed murder twice in Canada, that I know of. That was in Winnipeg. That is not a very substantial statistical figure, because at that time we were hanging most of our murderers and there was not much opportunity for them to commit a second murder. But in this case, the man did, and he was hanged for a second murder. The answer to your question is that these are people who, generally speaking, are the best bets.

Senator McGrand: There was only one, you know of, who committed two murders, who repeated the crime?

Mr. Kirkpatrick: Only one that I can recall. There may be more.

Mr. Lewis: He was a man whose sentence had been commuted.

Mr. Kirkpatrick: His sentence had been commuted from death.

Mr. Lewis: Then he served a penitentiary term, and after serving a penitentiary term, when he was given a ticket of leave, as it then was, he committed the second murder. However, that was some time ago; that was mentioned in the parliamentary report in 1955.

Mr. Kirkpatrick: It was in the thirties, I think, was it not, Mr. Miller?

Mr. Miller: In the early forties.

Senator Hastings: I think the recidivism is one in a thousand.

Mr. Lewis: Very low.

Senator Lapointe: What is your opinion about the sentencing by judges? Do you think there are inequalities in sentencing?

Mr. Kirkpatrick: The popular opinion is often expressed that we should have sentencing boards. I personally do not favour this. I think the statistical problem would make you shudder, if there is to be a review of all the sentences of only imprisonment that are carried out, even in Canada; it would be in the thousands. This is a Herculean task. The sentencing board would be operating by committee; it would not be operating in the open light of publicity in which our courts operate, where justice can be seen to be done and the public are aware of what is done. The sentencing board may be composed of experts, but they would be concerned with treatment factors only, and in their zeal for treatment they may well go beyond the civil rights of a man for the actual "social disvalue" of what he did.

Another factor is that judges are able to follow the whole proceedings, hear the evidence, watch the bearing of the witnesses and of the accused in open court, and can form an opinion of the evidence and of the accused. They now have the help of pre-sentence reports in most provinces, and they can get clinical help in most provinces if that is also desired. It seems to me, not only from the point of view of the volume of cases, which would make a Herculean task for a sentencing board, that it is better to have this done judicially in open court, and then turn the problem of treatment over to the correctional people after sentence has been passed. I personally, as a professional social worker, would far rather take my chances in sentencing before a judge, subject to the court of appeal—and we must not forget that sentences by judges can be appealed, and often are—than by some sentencing board composed of professional or para-professionals.

Senator Lapointe: Do you think there is enough uniformity of sentences in different provinces, or are some provinces stricter with sentences than others?

Mr. Kirkpatrick: I have no research data to prove this. This could be obtained for you, I am quite sure, from a review of the criminal

statistics by provinces across Canada. In fact, Senator Hastings may already have done this, or had it done; I do not know. I suspect that there are serious differences across Canada in the sentencing process for different kinds of offences. The only document that would support this view, that I know of, is the study by Dr. Jaffary, "Sentencing of Adults in Canada," in which I think he found this was in fact the case.

Senator Hastings: Is that Dr. Hogarth?

Mr. Kirkpatrick: Dr. Jaffary, some years ago. Dr. Hogarth's study was within Ontario in connection with the then magistrates, now provincial judges, of the criminal division. That related to the attitude of magistrates in relation to sentencing. I have quoted his findings, as far as they relate to the parole service, in this brief at page 28.

Senator Hastings: There are discrepancies in sentencing even within a province, of course.

Mr. Kirkpatrick: Yes, there are.

Mr. Lockwood: And within courts too.

Senator Laird: There are even within a city. I do not want to start mentioning names, but I could.

Mr. Kirkpatrick: There could well be discrepancies with "sentencing by committee."

Senator Hastings: On page 8 you say:

It is the reporting of a few bizarre cases involving parolees that creates the popular belief that many parolees are engaged in continuing criminal activity.

We had evidence before us in the last couple of weeks based on this same premise. What can we do about these statements that are made?

Mr. Kirkpatrick: We talk of public opinion, and it is always a little difficult for me to know what public opinion really is, whether it is spontaneous or whether it is formed. I think the media would say that they play a considerable role in the formation of public opinion. I do not think they would deny that. In fact, that is what they are in business to do. They therefore naturally report cases which are bizarre; these have news value; they have the interest of the public. I am sure that everyone of us turned to the right-hand side of the morning paper this morning to look at the story there. It is a matter of vital human interest.

These problems only become visible to public opinion through the media, and it seems to me that it is the responsibility of the media, in their editorial comment at least, to make a complete case for the correctional process, of which parole is a part. They are in a position to give perspective to these bizarre cases, rather than necessarily exploit them. I would hope that the results of your inquiry, as reported in the press, would help to bring about this attitude, rather than add to the fears of society.

We must make society recognize that there are people at risk among us all the time, of whom parolees are only a very small

fragment of the population. We accept a releasee from a mental hospital going out and committing some bizarre crime, and we do not make too much fuss about it; we accept this. But we do not accept it with a criminal offender. Some criminal offenders are emotionally and mentally disturbed.

Senator Hastings: What do you do?

Mr. Kirkpatrick: I do not know just how to describe it, but to me the answer may seem rather, I was going to say, thoughtless. We have men who are in prison and they have gone through the process of the criminal law. They have been evaluated and assessed by professional personnel, by custodial personnel and by the Parole Service. The time comes, in the general opinion, when they should be tested. So they may be given a day parole, or a temporary absence, to test their ability to have full release back into society.

No matter how expert the assessment and the evaluation may be, by the most eminent of psychiatrists, no one can prophesy with absolute certainty what any human being will do, in the specific set of circumstances that he meets when he is being tested on the street. But if we do not test these men, in interim ways, such as through day parole and temporary absences, then we are just tossing them out to sink or swim, without the return to the institution.

Therefore, society has to accept that there is a risk in corrections. That is why men are placed in prisons in the first place. We have to take risks. If we are not prepared to do that, then we go back to where I came in, when all our institutions were maximum security institutions. Some of the senators here remember those days.

Senator Haig: Not as inmates!

Mr. Kirkpatrick: I did not suggest that, sir. We probably have 30 federal institutions or more now, of all degrees of custody, so that we can test men from maximum security to medium security and see how they fit into the training program, how they react; then try them in minimum security; then in a work camp or in a community release centre where they are actually living in the community. All this is being done to lead them back and restore them to society with the utmost care.

I know correction workers very well, and let me assure you that there is nothing thoughtless or careless about this process. I know that there is a great deal of heart searching on the part of professional workers and staff generally in the correctional field, on this whole matter. They do not take these decisions lightly, but do their very best, as competent human beings, to assess the dangers and the risks and to lead these men back, in the interests of society, by the best possible way, and to test them in small segments before they go the whole way.

Senator Hastings: You are in complete disagreement, then, with the irrational outburst the other day of Judge Coderre of the Montreal Court, when he said that he had done a poll of 116 cases on parole and he had found that 85 per cent had offended within two or three weeks. What can you do about these sorts of inflammatory and inaccurate statements that are being made?

Mr. Kirkpatrick: Again, we have to rely on the media to present the other views that people have and to endeavour to get such people to reveal their facts. I am not in a position to say what the facts are in this matter. This man has made a statement. Presumably his data convinced him that this is true. I have no way of knowing that. I doubt it very much.

Senator Hastings: Mr. Chairman, would an invitation be extended to Judge Coderre to appear before this committee?

The Chairman: I would be happy to extend an invitation to him.

Senator Hastings: I think we should extend an invitation to him and ask him to bring details of his 116 cases.

The Chairman: I have extended an invitation to some judges in British Columbia who expressed some interest, and they said they would let me know.

Mr. Lewis: Mr. Chairman, I wonder if I might add a comment on that. You spoke of some of the judges in British Columbia.

The Chairman: Some of the better known ones.

Mr. Lewis: I know some of the statements made. The impression has been created by a number of commentators—including some members of the judiciary and some radio hotliners—that the National Parole Board, in effect, is capriciously—and I am using my words carefully—annulling the sentences of the courts. I do not know whether Judge Coderre's assertions go quite that far. I am surprised to find how widespread the popular impression seems to be that that is, in effect, what the Parole Board is doing. What is completely not understood is that the clock on a man's sentence is stopped the moment he walks out of the institution. A comment has been made here on recidivism during parole. What happens then is that the man goes back to the institution to serve the remanet, as it existed when he went on parole plus, consecutively, any new sentence that may be imposed. There are decisions in the courts of appeal saying that some judges' endeavours to make a second sentence concurrent are illegal, and that the sentence has to be a consecutive one. It seems to be very imperfectly understood by the public that a parolee is under a great legal risk if he does anything wrong. There is one particular case that I came across in the reports in the Supreme Court library where someone was picked up in the last three days of a long parole, and he went back to do the entire time as it was when he went out the gate. It is not generally appreciated that parolees are under a great legal risk. I am not saying that they should not be, but I am pointing out that the situation is not that judicial sentences are being annulled.

The Chairman: These people who are paroled are people who were going to be eventually, at some time, parole or no parole, turned out on the street.

Mr. Lewis: Mr. Kirkpatrick has said that we have with us in society a number of people who are at risk. An eminent American psychiatrist, commenting in the last two weeks on hijacking, said that on the basis of his analysis of things he felt there were a

hundred thousand people at large in the United States capable of aircraft hijacking. He was not advocating preventive detention; he was not advocating a general search to find that hundred thousand and lock them up. That is a real illustration, in terms that we understand very much these days, of just the risks that there are. These people are loose in society, and we can do nothing. As you say, Mr. Chairman, parolees are people who are eventually going to be released, and we have to ask ourselves the question: Do we want them released in worse shape and of more danger to society than when they went in?

The Chairman: And the longer they are in, the tougher it is for them to be re-integrated into society when they are let out—is that correct?

Mr. Kirkpatrick: That is correct.

Mr. Lockwood: Mr. Chairman, if I may add something to what has been said in the answer to Senator Hastings' question, I think any answer made in the media, any positive answer, any good news, would have to be in the nature of statistics, because of the nature of the subject matter. You can publicize the name and occupation of a person who has committed an offence whilst on parole or who has breached parole; but all of us who have worked at this professionally, or as lay members of the board—and many senators here too, no doubt—know that there are people in society who have not only completed their parole successfully but who have in some cases become quite prominent members of society. You cannot plaster their names all over the newspapers so you cannot answer the kind of adverse criticism with positive news by naming names and circumstances.

Senator Hastings: It has to be statistics which are not very appealing. There is no sex appeal.

Mr. Lockwood: That is right.

Mr. Lewis: A number of societies have former clients as members of boards throughout the country. This illustrates our measure of confidence in them.

Senator Hastings: I notice that in your list of staffing you include doctorates and so forth. Do you have former offenders?

Mr. Kirkpatrick: Yes.

Senator Hastings: In what percentage would they be?

Mr. Kirkpatrick: I do not know how many there would be throughout the country. We have some and find that they do good work under careful supervision.

Senator Hastings: Do you have any natives?

Mr. Kirkpatrick: I do not think they have any special attributes, except that perhaps they recognize when an ex-offender is endeavouring to con them more easily than some of the other workers may.

Senator Hastings: But do you not think there is much easier communication?

Mr. Kirkpatrick: I do not think any more so than with the experienced workers.

Mr. Lockwood: We have had an Indian worker in Manitoba for approximately two years. I am told by the professional workers that he does very well. All the reports that I receive as a board member are that this experience has been a success.

Senator Hastings: That is one only in Manitoba?

Mr. Lockwood: Yes, we only have four professional workers in the Winnipeg society, so to have one native person is a pretty fair proportion.

The Chairman: It is 25 per cent.

Mr. Lewis: There are some in Alberta, and there has been an Indian court worker with the John Howard Society in British Columbia for some time. There is also one on Vancouver Island.

Senator Hastings: In view of the high proportion of native inmates in the Prairie provinces, have you given consideration to a crash program of some type to induct native ex-inmates into your staff?

Mr. Lewis: The John Howard Society of Alberta, in your own province, senator, has been involved for some years, in conjunction with the Department of the Solicitor General, in a half-way house for natives. This is largely staffed by natives, and the society simply provides administrative supervision in conjunction with the federal government. It is a problem to which we have endeavoured to give attention. This has been ahead of public interest in it, I might say.

Senator Hastings: But in answer to the question, have you given any consideration to a special crash program?

Mr. Kirkpatrick: No, I do not think anyone has done that. I am not sure that it would be the proper method. Where special problems exist relating to the fact that the person is Indian or Metis, he has other problems. Our method has been to work in very close co-operation with the Indian friendship groups in a community and to endeavour to enlist their help in that aspect of a man's integration. This probably would be a better solution than instituting a crash program and hiring a number of staff of native descent.

Senator Hastings: We heard a native viewpoint last week from inmates of Drumheller. It stated that they simply do not relate to the white parole officer, who knows nothing of their problems and life style, and there is a terrible communication gap.

Mr. Kirkpatrick: There was a program in the federal correctional system to train native parole officers.

Senator Hastings: I am aware of that.

Mr. Kirkpatrick: My guess is that probably there were approximately 30 in the original program and now there are maybe 15.

Senator Hastings: I think there are six left.

Mr. Kirkpatrick: Only six. Well, I am out of date.

Senator Lapointe: Do you sometimes publish leaflets or pamphlets reporting successes, even though you would not publish the names of parolees? Are you giving some examples of success cases in booklets and other publications?

Mr. Kirkpatrick: Yes, very definitely. In reports of the society across the country constant reference is made to cases which are disguised but which are kept true enough that they reveal some of the problems which have been involved and some of the cases which have been successful. The same is done in speaking, lecturing and so forth.

Senator Lapointe: Do the newspapers sometimes reproduce examples of these successes?

Mr. Kirkpatrick: They do when they are doing articles on the society; or at the time of annual meetings they may do so. Often when there are financial appeals they will use these case illustrations as part of their story about the work of the society.

Senator Lapointe: Do you consider that this is enough?

Mr. Kirkpatrick: I think it is very helpful. I think the press have been very helpful in the whole development of correction over the last 10 to 15 years. I do not think we could have gone nearly as fast and as far as we have, without the support of a very informed press. However, there are unfortunate instances which occur, and I think our hope would be that they would see that they have been working towards this end, along with people in the services and outside the services in the correctional field, and that they have a responsibility for what they have helped to build, because the press and the media have helped to build our present correctional system. They just cannot desert it now. In fact, I do not think they are doing that, despite some of the articles in the *Globe and Mail*, for example. I quote, on page 27, one of their very helpful comments. They say:

Given our jail system, and given human nature, a certain amount of recidivism can be expected. Parole is a procedure which has much to recommend it and we would not suggest its limitation merely because some people are certain to abuse it.

So the press and the media, with exceptions, have been in the forefront of correctional reform.

Senator Lapointe: Could you tell us about the surveillance organization. For example, how many hours a week does a social worker spend with one parolee, and how many parolees does he have to care for?

Mr. Kirkpatrick: We give you that information on case load on page 22 of the brief; we discuss that aspect of it. We feel that the

current case load, with all stages of difficult and not difficult cases, should be about 40. That would be our feeling.

Senator Lapointe: Forty for one social worker?

Mr. Kirkpatrick: Yes.

Senator Lapointe: That seems to be a rather a lot.

Mr. Kirkpatrick: Have you read this?

Senator Lapointe: Yes, but I think it is a lot of work.

Mr. Lewis: It is a lot of work; that is quite right.

Senator Lapointe: Do you think there should be more social workers?

Mr. Kirkpatrick: It must be remembered that not all the work is done by interview. Much is done by telephone; much is done by home contact. Senator Laird asked me earlier about that. We are in the home quite a fair amount. Much is done by contact with employers, where the employer knows the man is on parole.

Senator Hastings: Does it not happen that the first three or four weeks is a concentrated effort, and then it tapers off?

Mr. Kirkpatrick: I would say that usually that may be expected to be the case. It tapers off to perhaps once every two weeks.

Senator Hastings: A phone call.

Mr. Kirkpatrick: Eventually it is once a month; then, as you say, eventually a phone call; and finally termination of parole. Even with lifers now there is a procedure whereby parole can be terminated, and they do not have this jeopardy hanging over their heads for the rest of their lives. On the other hand, a situation may suddenly pop up after a man has been out six months; suddenly there is marital discord, or problems with a child, an employment problem, where an associate has just become aware he has a criminal record and is bugging him, telling other employees about it. Many of these things can happen that will suddenly put the red flag up, and you have to spend a lot of time with the man, even though he had seemed to be finding himself. Progress in human emotions is not a level plot on a graph; it is on a spiral, we hope, or a zig-zag, which increasingly means social adjustment; it goes up and down, but we hope it leads to social adjustment in the end.

Senator Hastings: Parole officers tell me they have a ratio of one to 45. You say one to 40.

Mr. Kirkpatrick: At all stages. We refer to this in our brief. In the last letter I received from the Chairman of the Parole Board, who is here with us now, he mentioned that certain statistics were based on a case load of 40, so I presume there may be some agreement in the government service with the suggestion we have made, although they may arrive at it on a different basis.

Mr. Lewis: I wonder if I might comment on Senator Lapointe's last question, about perhaps not necessarily our public relations but letting the public know about the good cases. The executive director of the National Parole Service made a very effective speech to the John Howard Society of Nova Scotia at its last annual general meeting. The speech was entirely taken up with a recitation of cases that had turned out right. There is an effort, not only by us but also by the National Parole Service, to communicate these matters to the public.

Senator Laird: How much publicity did that get?

Mr. Lewis: I am not in charge of that. I am mentioning it here this morning, hoping to increase it.

The Chairman: We are just wondering if you have any knowledge of it.

Mr. Kirkpatrick: We have films that have been widely used, particularly in high schools. I know that the government service has films as well which are widely used. All of us are working in the high schools now with young people, not only in relation to the criminal justice process generally, but often specifically in regard to the drug problem, which you raised earlier, in an endeavour to have them see the problems relating to that. Ex-offenders are going out with us and talking in high schools. In some cases their names are disguised. Some do not mind; some are quite willing to have themselves identified, but usually they do not want to be identified. They are saying, "Look at me. Here is my life that was ruined. This is what I did. Here I am."

Senator Lapointe: Are the social workers in contact with the wives and children of parolees?

Mr. Kirkpatrick: Very much so. My wife is a child welfare worker and has what I call a cliché, that you cannot work with a child without working with its family. My cliché is that you cannot work with an offender without working with his family. It must be remembered that many of these men do not have families. If I recall correctly, when I made a study of the penitentiary statistics on one occasion only about 25 per cent, give or take a few, had valid marital relationships. Others were divorced or separated, and so on.

Many of these men do not have families. Many are young men of 18 and 19 who are not married. Often their parents have finished with them; they are through with them. Thank God this is not always the case by any manner of means, but frequently the parents want no more of them; they have had nothing but trouble with them, all through the juvenile courts, eventually in adult courts, their tolerance has reached its end and they do not want to see them any more. We come into those situations and try to see if there are some strengths that can be rebuilt, not only in the marital situation but in the parental situation. Where this is a possibility we definitely exploit it in every way we possibly can.

Senator Lapointe: Does the social worker watch the time the parolee goes home at night? Does he sometimes call to see if he is in bed or elsewhere at two, three or four in the morning?

Mr. Kirkpatrick: No. This is the kind of thing you would have to do by police work. In my opinion, supervision has certain aspects of control through the observance of conditions. In discussion with the man you will be discussing the problems you have mentioned, what his hours are, what he is doing with his leisure time, and so on. These will be part of the subject of discussion in a supervisory interview. Going out and endeavouring to follow a man or exercise "surveillance" is, to us, a police function, and even the police cannot keep a tail on a man 24 hours a day.

These men must be given the opportunity to react in society and make mistakes, just as any other human being does. They have lives to live; they are not children; they are men who have been around and who, in many cases, have lived hard in our society. They cannot be treated as children. On the other hand, we have to do everything we can to ensure that they live in a responsible way, and that is about as far as we can go. There is no way you can keep a man in prison, where you can watch him, if you like, pretty constantly, although you never can watch him completely, and do the same thing in the community. When he enters the community he is being tested for his responsibility to live back in society. You are helping him to do that, and as he makes mistakes you are working with the mistakes and are trying to make stepping stones out of stumbling blocks.

Senator Lapointe: Is the social worker getting in touch with the police and getting some additional information from the police sometimes?

Mr. Kirkpatrick: There is a relationship between the police and the social workers, particularly through the National Parole Service. The police usually prefer to give any comments they have about a man to the National Parole Service, and this would then be discussed between their representative and the representative of the after-care society supervising the man. Usually this is the way it works. For example, the police may find that a man is on the streets at one o'clock at night. A police officer may call the parole office and ask them, "Do you know that he was out at one o'clock and has been seen around with a pretty bad gang? We think you ought to know this." The Parole Service are glad to know this, and then will talk about this with us. Or we may get it direct; or we may get it from other parolees who may say, "John is heading for trouble. You had better watch him." This will happen.

Senator Lapointe: You say that the decision on paroling of inmates serving two years is to be made by the institution director and the district parole representative, with a review by the Parole Board in case of disagreement. Why are those two-year cases chosen for this method of parole? That is on pages 6, 7 and 8.

Mr. Kirkpatrick: That is the jurisdiction of the board. We chose two years because that would take roughly 45 per cent of the men who enter the penitentiary. About 45 per cent are sentenced to two years, give or take a percentage either way. We felt that the work load of the Parole Board is intolerable and must be reduced. We also feel that there is change coming in the Penitentiary and Parole Services; that the whole question of treatment programs on an individual basis is becoming more and more a reality. Therefore, there should be the possibility of parole, as that treatment

progresses successfully. This should be done by those who know him best, namely, the parole supervisors and the penitentiary staff, and then we could reduce the work load of the Parole Board by this amount.

Senator Hastings: You said that change is coming. Do you envisage an amalgamation of the Penitentiary Service and the Parole Service?

Mr. Kirkpatrick: Yes, we speak of that here.

Mr. Lewis: And that was discussed in the Ouimet Report, as you know, senator.

Senator Hastings: Yes. If there is one standard complaint from the offender, it is that he has no part in his planning for freedom. He arrives at the institution; he sees the Parole Board and has a briefing session. He never sees the Parole Board until he goes up for his parole application. In the intervening time he is under the custodial staff and the institution staff, and he may be working completely at odds with the Parole Board or the parole requirements. In your recommendations you seem to be bringing them closer together, with the parole staff right in the institution.

Mr. Kirkpatrick: Yes, that is right.

Senator Hastings: Do you envisage that?

Mr. Kirkpatrick: We envisage that.

Senator Hastings: Where are we going to get the staff?

Mr. Kirkpatrick: You could combine the staffs you have now. We speak about this on page 11. We suggest that the details of organization for that proposal would have to be worked out. We suggest a commission on inmate training and release, to supervise this combined staff and program. I would see this being on the national level at headquarters and extending down through the various regions of the Penitentiary Service, so that the same officers in the regions would be responsible within their region for that.

Senator Hastings: Returning to the Drumheller inmates' brief of last week, they advocated what they term an "earn your freedom" plan, which comes very close to what you are advocating here, that when a man arrives his objectives are set out for him and he earns his parole.

Mr. Kirkpatrick: Yes. There is a danger in this, as I am sure you are very well aware, that the man says, "Okay, you say I have got to complete certain shop work or I should complete a certain educational requirement. Now I have done that, I am ready for parole." But, what has happened inside him?

Senator Hastings: Nothing.

Mr. Kirkpatrick: Nothing may have happened. So there are other considerations involved than just the mere completion of certain objective standards that have been set for him. Some changes must be looked for, and this is where the continuous relationship of the parole and institutional staffs, working with him on a professional

level, should be able to give some estimate of whether he in fact is changing. They being close contact with him and knowing what his state of readiness is, should be the ones, it seems to us, in the so-called easier cases—the two-year cases, which usually would not present as much difficulty—who should make the decision.

Senator Hastings: There is one other complaint: "You do not tell me what is wrong. You tell me, Complete 9, 10, 11 or 12 grade; and when I do that you say my trouble is alcohol. No one tells me that, no one comes right out and calls a spade a spade."

Mr. Kirkpatrick: We speak about that too, as you recall, in the brief.

Senator Hastings: I know.

Mr. Kirkpatrick: It is on page 10. The problem of giving reasons is a very difficult one. It seems fair and square and logical, but it is a policy you are going to have to interpret to another human being, that there are psychiatric problems that are still very deep and involved, and this may be very shattering to him. This is another reason why we feel there should be a very close relationship, if not amalgamation, between the Parole Service staff and the penitentiary staff, so that somebody can pick up the pieces. When a man is interviewed by the Parole Service, the interviewer goes away and, the penitentiary staff is left to pick up the pieces, in treatment. This should be part of the same process.

Just to coldly tell a man everything with regard to a situation may be very threatening and disturbing. The tendency is for the parole panels to give general reasons. We hope that if there is time—which there has not been—the parole staff will follow this up with more detailed interviewing in conjunction with the Penitentiary Service. This is coming and is recognized as a need, I am quite sure. However, we must learn about these matters, and it takes time to work out good correctional programming.

Senator Hastings: I agree that it disturbs a man. I have experienced many occasions when they have declared they did not receive a reason, and I put it to them bluntly. It disturbs them at the time and throughout the day.

Mr. Kirkpatrick: Someone has to pick up the pieces when you do that.

Senator Hastings: But I notice they get over it in a week or two and then start to make progress.

The Chairman: He at least knows what he has to deal with, instead of imagining it.

Mr. Kirkpatrick: It is a very touchy business, and rather than giving full details in a panel hearing which, while informal, is still quite an experience for a man appearing before two or three people who have his future in their hands, much of this can be done in a treatment manner. An attempt is made to assist the man to gain from this knowledge and integrate it into his own insight and understanding. This is the best procedure, if it can be worked out through the amalgamation of our staffs and if the time to do it is made available.

Senator Hastings: One reason given was for the protection of society. That did not mean much to the inmate until I told him, "You have to believe it; you are a liar."

Mr. Kirkpatrick: This is not stated in the brief, but if these inmates could turn blue instead of yellow as is the case with jaundice, so that we would know when they are ready, it would be a wonderful thing.

We must remember, however, that prediction with regard to human beings in any field is a most difficult and, in fact, dangerous exercise. That is true even among senators, I am sure. In cases of men of this type, who are damaged in the process of social living and subsequently doubly damaged in prison, it is indeed a most difficult task.

We ask the Parole Service and the Parole Board and, now, the Penitentiary Service, with respect to temporary absences to predict with regard to men who have shown instability and inability to live within society in the past. We now say, "You are ready to be tested. You have reached this point at which you can be given an opportunity to see if you have made social gains." This is a very responsible decision. I can assure you from my knowledge of the staffs of both the penitentiaries and the Parole Service, which has been very intimate over the years, that these decisions are neither capricious nor taken lightly. They are arrived at with a great deal of soul-searching and heart-searching.

Senator Laird: With respect to the question of whether informing a man of a psychiatric problem will cause him harm or otherwise, does a great deal not depend upon the diagnosis of his ailment? For example, would it not be positively harmful to tell a schizophrenic that he will not be released because he is schizophrenic?

Mr. Kirkpatrick: The message I am attempting to convey is that there may be reasons for not bluntly telling a man, as Senator Hastings indicated, in open session. Someone sitting down with him in three or four sessions in a treatment environment may be able to interpret it so that he will have some insight. This is where we need staff time in the Parole Service and in the Penitentiary Service made available.

Senator Laird: That is right, and a study should be made.

Mr. Kirkpatrick: Treatment takes time. We cannot simply wave a magic wand and say, "We will treat this man." He has to be brought to a state of readiness. This brings us again to Senator Lapointe's question regarding case load. We all agree that if we could work to a point of a case load of 30, for example, it would free us to do more than is possible with a case load of 40. This is only sheer logic.

The Chairman: That would still be cheaper than keeping them in prison.

Mr. Kirkpatrick: Certainly it would. This is where we need to invest more money in our parole service, the correctional services generally and the prisons. I hope you will not forget the after-care organizations when you make that recommendation, if you do so, because we are faced with the same problem.

Senator Laird: You do a great deal of after-care, do you not?

Mr. Kirkpatrick: Yes.

Senator McGrand: You have mentioned that the convicted murderer on parole is not a serious problem. How do you assess the sex offender as a risk?

Mr. Kirkpatrick: I knew you were going to ask that question, senator. You told me you would.

In actual fact, there must be a distinction made between sex offences and sex offenders, which again is generalizing and very dangerous. Some sex offences do not carry a psychiatric implication. For example, if a man of 18 years of age rapes a woman of 80, you have trouble. If there is a sadistic obscenity and sadistic violence in the sex offence, you have trouble. If there is a great disparity in the ages of young children and the offender, you have trouble. If there is repetition of the sex offence, you have trouble. These are psychiatric indications that you have a disturbed person on your hands.

The Chairman: How do you view the case of an 18-year old boy with a precocious 15-year old girl, which is statutory rather than actual rape?

Mr. Kirkpatrick: I had intended to add that I am not advocating rape as a pastime at all, but rape not accompanied by the factors I have mentioned is really more in the nature of an act of aggression channelled sexually. It is a normal release sexually, but channelled aggressively and hostilely.

I hope I will not be misunderstood with regard to this, particularly if the press are here—

Senator Hastings: You will be, do not worry.

Mr. Kirkpatrick: Because I am not attempting to minimize the terrible consequences of rape, which is a despicable act. It is a sex offence, but it is basically aggression. The actual sexual response is, in a sense, a normal physiological response. That is what I am trying to say. So this type of man is one of the most successful types of releases that you could have. He is close to the murderer in this freedom from further crime.

The man who is psychiatrically disturbed is the one whom we have to be very concerned about. This may be revealed by a pattern of sexual deviation, or it may be revealed by one incident. Again, this is very hard to determine. These are the kind of men who, in my opinion, should not be imprisoned in the first place. Society should recognize that here there is an emotional, mental disturbance, and that this punishment is not the way to handle emotional disturbance, that these men should not be imprisoned but should be in mental hospitals. This is society's fault for putting the wrong kind of people into prison.

The Chairman: May I ask a follow-up question? With the proposed introduction of the living unit concept in the penitentiaries, I was very impressed with the film I saw on CTV some time ago. I have made arrangements for it to be made available

for the committee to see. At least, they are trying to make it available to us. They had the living unit people themselves sit down. It was a question of when the fellows would be ready to be available. They gave their opinions. The staff just adjudicated the discussion. They showed only one case because there was just so much time, and he said, "Joe is just about ready. He doesn't fly off the handle any more. He gets crossed up. He looks at you, and you can see by the look in his eye what he is thinking. We don't think he is ready just yet." The fellow seemed quite prepared to take that. Would you think that, once they got that living unit concept set up, once you had parole officers working in that living unit, or people working in that living unit who would be dealing with them, or representing people that would be dealing with them when they got out, those who were living with them day by day might be able to make a more sound judgment on when a man was actually ready than could be made through the more or less stereotyped procedures we have to follow under the present system?

Mr. Kirkpatrick: Yes, I think, very definitely. The inmate has an input into that too, but only one part of the input. They can also take positions of manipulation regarding inmates that they do or do not like. They are subject to strong-arm methods to like certain inmates.

The Chairman: Even if you have a very small unit?

Mr. Kirkpatrick: Yes; that might very well happen. Their input is only one part of the total input.

The Chairman: This would not be a solution, but it could be a helpful aid to a solution?

Mr. Kirkpatrick: Yes. Incidentally, the living-in unit concept will officially start on July 3 in Warkworth Penitentiary, and the four other medium security penitentiaries will follow very shortly after. As you know, this is the concept that has been recommended to the Solicitor General in the Mohr Report, for the new maximum security prison which is supposed to be built in B.C. at an early date.

The question of the use of professional personnel in the actual living unit experience, I think, becomes a very difficult one. The thought is that we should have men who have special training as correctional officers in the actual living situation with the inmates, eating with them, going to recreation with them, being at their shops with them, where they can observe and discuss what is going on in the shops, and in the whole life of the institution. Then they would be supervised by classification officers who are professional personnel and who would relate, through them, to the Parole Service. If the Parole Service or the classification Service became merged, the Parole Service would be intimately related to that, and, I am sure, would want to be as intimately related as they possibly could be, even under present circumstances.

The Chairman: Another question I wanted to ask you is that I have seen from actual experience a fellow come out of prison with \$20. I am thinking of one in particular.

Mr. Kirkpatrick: From a federal prison?

The Chairman: Yes.

Mr. Kirkpatrick: I think he is taking you up the garden path, senator.

The Chairman: Well, he comes back after two years and all he has is \$20.

Mr. Kirkpatrick: He has a little bit on the way. A two-year man should have at least \$37.50.

The Chairman: Well, let us give him \$40 or \$50.

Mr. Kirkpatrick: I was just trying to put the record straight.

The Chairman: He arrives in town on Friday night and by Monday morning he is broke. He is a single man and does not have a family. Is there any way in which there is support provided for such people during that period when they are trying to get on their feet?

Mr. Kirkpatrick: The agencies have all budgeted for emergency help in this regard. I cannot recall the amount, but a sizeable amount of money across the country goes into emergency shelter, food, work clothing, work tools, even alarm clocks to get guys up at 6 o'clock in the morning to go to work, and the car fare to get them to work until they are paid. All these things have grown out of our experience. You have to give some practical help to men, as well as counselling, if you are really going to do a job.

I would like to mention, along this line, some of the comments that men have made regarding supervision by after-care agencies. In the study which I quoted in the brief by Miss Lois James, "Business Perceptions of Parole," at pages 124 and 125, the question of supervision was mentioned. She says:

The respondents' answers to the question "In your opinion, does parole supervision make a difference to whether a man goes straight or not?" shows that three-quarters of the inmates felt supervision was helpful in going straight. Guidance, support and material aid were seen as the positive aspects of supervision.

Then, I think you have had a brief from the parole group in the John Howard Society of Toronto. I note that they say:

After-care services and volunteer groups can provide an invaluable resource to any man on parole.

These are parolees talking.

The particular services available must be ones for which the parolee feels a need. For example, job placement, family counselling, social contacts, or non-specific areas such as reassurance or reinforcement of positive goals.

These are intelligent men.

Social agencies should be able to make all community resources available to the parolee if he requires them. Once again, this relationship must be free from compulsion on either side in order to be effective. Should it ever occur that a parolee is denied service from a private after-care agency, the Parole Service must be able to provide a similar service on request.

Then again at page 10, I think their views are interesting:

Parole Service, After-Care Services, and Volunteer Groups can provide invaluable assistance to a man on parole . . .

We, as men on parole under the supervision of a private after-care agency, feel that the loosely knit association that this Agency has with the Parole Service is quite effective in the day to day operations. The staff of the Toronto office are able to work with their counterparts in the Parole Service Office in Toronto with a minimum of difficulty. The National Parole Service appears to respect the decisions which are reached with our supervisor on an individual basis, and appear to be quite supportive of the total process.

We realize that we have a relationship in which we are responsible to the National Parole Service for the supervision that is given, and they seem to feel this relationship is working satisfactorily from their point of view.

Mr. Lewis: There is one other aspect also to assistance to men just out of an institution. I know that in a number of areas our workers are able, in conjunction with local social welfare departments, to obtain temporary social assistance for a man just out of an institution. I know that in Vancouver, for a time at least—I cannot say whether it is so now—the city welfare people were very quick to give temporary assistance on the basis that our workers would administer the money. This was of great assistance in providing shelter and stop-gap aid, as you say, in the first few weeks that a man was out.

Mr. Kirkpatrick: I was thinking of the immediate stop-gap. The next process generally across the country is to relate the man to the proper services for social assistance in the community. I was thinking that on that particular morning he is broke, relating it to the question you raised, the general procedure is immediately to get him into the proper channels for social assistance until he can earn his own way.

Senator Lapointe: In your opinion, is there much evaluation and thinking when temporary leave is granted instead of parole? When they grant temporary relief are they thinking about it as much as when they grant parole?

Mr. Kirkpatrick: You have to distinguish between day parole and temporary absence. I am not sure which you mean.

Senator Lapointe: Temporary absence.

Mr. Kirkpatrick: This is done by the Penitentiary Service. Unfortunately, the media seem to be confusing it completely with parole.

Senator Laird: So does everybody.

Mr. Kirkpatrick: But the media should not be doing this. Everybody is not necessarily informed, but the media are certainly informed. The confusion exists in that temporary absence is dealt with by the Penitentiary Service. Under the act it is for humanitarian reasons, or to assist in the rehabilitation of the inmate. As we say in the brief, this has been construed to permit continuous work or education, made possible by issuing continuing passes, which is really in a way a form of day parole. Our view is that that should stop. We say they should simply issue passes for compassionate or humanitarian reasons and not for extended periods of time; but if that is what is desired, there should be day parole, and that responsibility then falls at present on the service.

However, I think it is pretty general in the Penitentiary Service that they are asking for temporary absence community assessments, just as the Parole Service asks for community assessments in regard to parole. They are endeavouring to find out what the situation is in a man's community before they release him on temporary absence. I know our societies often get a phone call reporting an urgent situation in such-and-such a place, "So-and-So is very sick, so we are told. Will you check this out and let us know?" We will check this, and find out what the home situation is or what the particular problem may be, phone back and tell them what we have found out about it, after which they may take action on it.

Senator Lapointe: Is desire for marriage a compassionate reason?

Mr. Kirkpatrick: I think the desire of marriage is a very important desire.

Senator Lapointe: But is it a compassionate reason for releasing an inmate?

Mr. Kirkpatrick: Not necessarily.

Senator Lapointe: Last night on the television program all those interviewed said that in sentencing there should be an element of punishment, that the man who was guilty should feel that he has to be punished for what he has done. Are you of the same opinion?

Mr. Kirkpatrick: I do not write punishment off. I cannot, because it is there; it is a reality. If you were in prison you would find it punishment. If you were on probation, even though you were in the community, you would feel that you had certain responsibilities, that your life was not completely free and you were being punished. Certainly this is true in prison. There is a small group of men, as I have mentioned before, among whom are some of the sexual offenders, and others, who should not be in prison, in my opinion, because they are emotionally or mentally unstable. They should be in mental hospitals; that is my opinion. What efficacy does punishment have for men in an emotional state of that kind? Can you cure them by punishment? I do not think you can.

There is another group, probably the largest group we have, of men who have lived in the neighbourhoods in our downtown sections where their way of life has been different from that which society, as a general group concept, would want to have followed. "Everybody in those areas goes to prison" is a saying that is often quoted, though it is not true. The whole vital social statistics in many of these areas of our communities are concentrated, and all the family disorders, troubles and difficulties of employment, poverty and housing, amongst other things, go into the warp and woof of the creation of the criminal. These are men who quite frequently have been punished in their whole life experience. What more can be added in the way of punishment that will deter them?

There is a smaller group, who are the middle-class type of person, or the situational type of offender, where punishment bears very hard, and may in fact have some effect of a salutary nature.

Again I think it is too easy to generalize on these matters. We have to look at the effect on every individual. In my opinion, punishment alone is completely useless. If we have a man in our power for two, five or ten years and society does nothing to try to

change that man, then we have only wasted money, time and effort in a static process, rather than trying to make some dynamic contribution to that man and to society. This is what the correctional process is all about. This is where we are trying to get it today, and it is moving very fast towards that process, where punishment will be of less emphasis, and control will be less emphasized than treatment, training and restoration to society.

The Chairman: Honourable senators, I do not want to cut off this discussion but, as most of you are aware, I have an appointment which involves the committee in a very serious way, in just five minutes. I think I should leave for that meeting now, and am about to ask Senator Laird if he would take the Chair.

Senator Laird: Mr. Chairman, with one question from Senator Hastings, I think we could finish.

Senator Hastings: Mr. Chairman, I am still disturbed by Judge Coderre's outburst in Montreal. I wonder if you would undertake to call him as a witness. I think it is an inaccurate report, and I think he should be invited to bring his 116 files here so that we can have a look at them.

The Chairman: I will offer him an invitation to appear. As to calling him, I will get advice as to whether it would be advisable. We undoubtedly have the right to subpoena. I am not sure that properly that subpoena power ought to be exercised against somebody holding the position of a judge, even though he was acting outside the scope of his authority at the time he made the statement.

Senator Hastings: I think it is an inaccurate and an irrational reflection on the Parole Board and all it is trying to do.

The Chairman: I will certainly offer him an opportunity to appear. I will see that that letter goes out this afternoon.

On your behalf I would like to thank Mr. Lockwood, Mr. Lewis and Mr. Kirkpatrick for the carefully thought out and useful brief they have brought to us; and in particular for the competent and experienced way they have been able to lay before this committee the fruits of their long experience in this important field. It has been most helpful to us.

The committee adjourned.

APPENDIX

JOHN HOWARD SOCIETY OF CANADA

73 Colin Avenue, Toronto 7, Ont.

May 1st, 1972.

The Standing Senate Committee on
Legal and Constitutional Affairs,
Ottawa, Ontario.

Honourable Sirs:

PAROLE

In the United Nations Department of Social Affairs Monograph of 1954 parole is defined "as the conditional release of a selected convicted person before completion of the term of imprisonment to which he has been sentenced. It implies that the person in question continues in the custody of the State or its agent and that he may be reincarcerated in the event of misbehaviour. It is a penological measure designed to facilitate the transition of the offender from the highly controlled life of the penal institution to the freedom of community living. It is not intended as a gesture of leniency or forgiveness."

It is a development of the treatment principles of social work applied to penological practice in the return of the offender to the community and blends the use of the authoritative aspects of the parole status and conditions with the treatment objectives of the supervisor who should be operating from fundamental principles of social work to the fullest extent possible compatible with his training and experience.

Parole is essentially an administrative mechanism involving an assessment of the inmate's ability to re-integrate in the free society with reasonable assurance that society will be adequately protected. It is axiomatic that almost all inmates eventually return to the free world regardless of their fitness for release. Hence it is better that a man return to his community under supervision and with the feeling that his endeavours in the institution have been recognized and more ready to co-operate in his re-establishment because he has had a "break". Effective use of parole may do much to solve the problem of the recidivist, since effective work may often be accomplished with his actual problems on release in the non-custodial atmosphere of post-release supervision.

The advantages of release by parole involve:

- (1) Supervision on release with greater hope for adjustment in home, job and community,
- (2) the positive and constructive endeavour of inmates to work for parole by cooperative participation in the treatment and training programs of the institution,
- (3) the reduction of the custodial phase of long sentences which may well do more harm than good if served entirely in the prison since such sentences breed hopelessness, hostility and, eventually on release, in too many instances, almost complete dependency and inability to cope with the problems of living in society.

- (4) the protection of society by the release of the inmate with the feeling that he has been given trust and that his potentialities for "making good" have been given recognition,
- (5) the positive attitude that can be engendered in the disciplinary management of the institution by the knowledge that parole can be obtained by all classes of inmates in a sufficient number of cases as to encourage hope and effort.

It is noted that there are three basic elements in the granting and acceptance of parole. These are the conditional remission of part of the sentence, an element of contract between the grantor and the parolee who agrees to the conditions of the parole on the basis of the period of his sentence which is remitted from imprisonment, and the agreement by the parolee to accept supervision of his life and activities while he is continuing to serve the sentence of the court under conditional freedom.

As a by-product, though not part of the function of parole, there is the amelioration of the effects of inequality of sentencing which is the product of great tension and bitterness among the populations of the penal institutions and may be due to the lack of consistent sentencing policy in the courts across the country. In addition there is the saving of custodial costs amounting to over \$10,000.00 per inmate per year as against the relatively small cost of a few hundred dollars for supervision in the community and the positive participation of the parolee as a wage-earner responsible for his family and as a taxpayer.

PARTICIPATION OF AFTER-CARE AGENCIES

In the Criminal Law Quarterly of February, 1960, A.M. Kirkpatrick, then Executive Director of the John Howard Society of Ontario, wrote:

"The release of the offender is also a matter of utmost importance since he should not be kept in prison purely for punitive reasons when he may, in fact, be at the point of readiness to return to social and economic productivity. If a man is kept too long in prison when he is ready to be released he may become either very greatly embittered and hostile or, on the other hand, extremely dependent and incapable of forming any coherent plan or carrying it out when he returns to the community. Imprisonment should be regarded as a cast placed on a leg to assist the reunion of shattered bones but to be removed as soon as indicated to avoid secondary damage to muscles by atrophy due to disuse.

"Experience has indicated that there should be increased reliance on parole as the method of release, and this calls for

a developmental process about the potential the individual has for re-establishment in the community. Parole means that the inmate is still not free even though he is living in the open community under certain conditions and under supervision. Usually the supervision is provided by prisoners' aid societies such as the John Howard and Elizabeth Fry Societies, or in some cases by probation officers."

This quotation is typical of the articles and speeches made by members and staff of the John Howard and Elizabeth Fry Societies across the country interpreting parole and urging its development since the early 1950's. Briefs to this effect were submitted to the Fauteux and Ouimet Committees. During those years, when Ticket of Leave was the form of release under the jurisdiction of the Remission Service, the after-care agencies provided most of the parole supervision and from 1959 cooperated in the development of the Regional and later District Offices of the parole service being set up to implement the functions of the newly formed Parole Board.

Their long experience and intensive knowledge of parole provided a valuable cross-fertilization from the community to the developing parole system which was helpful in the early practice of supervision. The supervision provided by the after-care agencies slowly dropped proportionately with the development of the parole service but has recently been climbing back to the fifty percent partnership authorized by the present Minister. The actual balance at December 31st, 1971 was that 53.06 per cent of the community assessments and 42.19 per cent of the parole supervision were being done by agencies other than the parole service itself and these included some provincial government services.

The after-care agencies had their offices in the major communities in Canada and were functioning in both ticket of leave supervision and general after-care of released inmates before the offices of the parole service were located in the same communities. This development by the parole service was accomplished with remarkable cooperation by both groups and the after-care agencies have continuously sought to develop a partnership between the community and the government agency in the delivery of field services.

They have steadily affirmed their belief in parole despite unfortunate instances concerning parolees which from time to time have caused some public concern. They have also supported the principle of mutual partnership which has now been recognized by the Minister in the Service Agreement with the after-care agencies. This provides a financial floor and a feeling of certainty as to the course which is to be followed which makes budgeting and staff development more viable for the agencies than during previous years when the extent of the task was not outlined and the fluctuation from year to year made prediction most difficult.

It remains still for some mechanism such as a joint government-after-care agency committee to be set up to provide opportunities for discussion of policy and practice before these are unilaterally announced by the parole service. An example of this need is that, despite requests, directives, or even précis of these, regarding practice are sent to the District Offices of the parole service but not to the after-care agencies which are doing such a high proportion of the supervision. The various district offices of the parole service appear to be interpreting these directives differently and the

after-care agencies have no direct knowledge of the expectations of the parole service as to the service they are rendering.

Such a service and financial partnership has not over the years been an inhibiting factor in the penal reform functions of the after-care agencies who may in a sense be said to be the conscience of the community and one of the avenues for the expression of the views of inmates and ex-inmates in matters of correctional policy and practice. Starting with small grants in the late 1940's the Federal and most of the Provincial Governments have provided grants. But during these years the influence of the after-care agencies has increased rather than diminished in their public representation of what they considered desirable correctional progress. There has been acceptance of this role by the governments concerned whose maturity and that of their senior staff has not resulted in threats of financial reprisals. In fact, increasingly, governments are welcoming representation in correctional matters from informed private agencies.

STANDARDS

There are certain standards which should be expected from after-care agencies in relation to the rendering of services in cooperation with the government agencies which have a right to expect that these will be met.

The Board of Directors of the agency should represent the broad responsible community, review agency objectives and programme, formulate basic policies and engage in an orientation programme and a continuing educational programme regarding the agency and its services in relationship to the correctional field as a whole.

In regard to staff, there should be stated job descriptions, personnel policy, salaries related to current professional scales, recruiting, when possible and available, staff with professional orientation in social work, a staff development programme, regular supervisory opportunities for staff and regular evaluations.

The agency structure should contain a constitution and by-laws, defined channels of communication among staff and from staff to Board, financial support based on both public and private sources, development and continuing review of working relationships with community agencies and services, and with the parole and penal services.

The agency programme should show public interpretation of service, publicly stated objectives and programmes, clear statements of eligibility for any service programme related to prison experience but offering no barrier to race, creed, colour, residence, or personal characteristics, control of work loads, volunteers used only under supervision and with training, defined service practices including confidentiality, yearly review and planning, a record of the service given to individuals and a statistical recording of services. Accounting should provide for an annual audit, annual planning in review of the budget and an annual public statement of the financial and service position.

But over and above these objective standards no satisfactory way has been yet developed in measuring quality except by the judgement of trained professionals regarding the performance of the caseworker with the client. The parole service workers in the District Offices receive the reports of the after-care agency workers

for community assessments and supervision and obviously make judgements as to the service being rendered by the after-care agency worker insofar as this is revealed in these documents. But the parole service staff are not necessarily trained in supervision and in fact many of the after-care agency workers are longer experienced and with better professional training than their parole service counterparts.

A high proportion of the staff of the after-care agencies have had professional pre-employment training. For example, a quick survey of the staff of the John Howard Society of Ontario revealed that of 35 supervisory and casework staff, 24 had Master of Social Work degrees, 1 had a B.S.W., 8 had B.A. degrees in Sociology and were hired on a staff development basis which, following two years of successful practice, would enable them with financial support to proceed to the M.S.W. degree. One of the staff was an ex-parolee with a grade 12 education, but with considerable informal education and life experience.

It does not follow, that persons without pre-employment professional training were unable to make a successful contribution in this field of correctional service. With good supervision, experience and dedication to the task many have made most satisfactory contributions which, however, might have been even greater with pre-employment professional training. The same general mixture of staff qualifications will, I am sure, be found in the staff of the Parole Service.

It is difficult, therefore, to expect the parole service staff to be experts in the judgement of the quality of casework service being provided by the after-care agency workers though they are in a position to assess, from their viewpoint, the functions being performed for the parole service in assessment and supervision. The judgements by either party in problem situations may differ and such matters are worked out on the supervisory level with rare cases becoming matters for administrative discussion between the heads of the services concerned. They have so far been settled in a most amicable manner with the Executive Director of the Parole Service.

The quality of service being provided by the parole service staff should, in equity, also be scrutinized by qualified independent observers and researchers. The after-care agency workers are not in a position to do this as they do not have access to all their reports and have no way of judging concerning their direct involvement with their clients. They know only the content of the referral material concerning inmates and the type of relationship they have with the parole service officer concerning the cases they are supervising.

The product of the service also provides some indication of its quality. A study of High and Low Risk Parolees was made by two students, Vichert and Zahnd, under the supervision of Dr. T. Grygier for their M.S.W. degrees at the School of Social Work at the University of Toronto and reported in the January, 1965, edition of the Canadian Journal of Corrections. This study was made of parolees in the Ontario region under supervision by all agencies including the parole service. The major finding was: "The attribute found to be the most strongly associated with success among the high risk group (three or more convictions) was supervision by the John Howard Society. Of the ninety-one in the high risk group, forty-seven were supervised by the John Howard Society. Of these twenty-one or 44.6 percent succeeded on parole. Of the forty-four

high risk parolees supervised by other than the John Howard Society only six or 13.6 percent succeeded on parole."

Other factors such as staff development programmes, the supervisory and administrative structure of the agency focussed on the delivery of service, the motivations and quality of the laymen who are on the Boards and Committees of the agency representing community values, all play a part in standards of service. The acquisition of sound human beings with good pre-employment education for staff positions is of great value. Professionally trained personnel cannot always be obtained due to general shortages in the social services of the community.

DIFFICULT CASES

There is reason to believe that the after-care agencies are receiving a full share of difficult cases. The standard of supervisory control and the difficulty of cases may be related to the extent of revocation and forfeiture in the respective caseloads. In the Report of the Parole Service for 1969, of 3956 parolees under supervision, 1246 were by the after-care agencies and 1504 by the parole service. There were 89 revocations of after-case cases and 93 of parole service cases and there were 175 forfeitures (for a further indicatable offence) from the after-care caseload and 198 from that of the parole service. This indicates an apparently even balance in the control aspects.

JURISDICTION OF THE PAROLE BOARD

At present the decision making regarding all parole is the responsibility of the Parole Board which makes thousands of individual decisions each year. The staff of the Board in cooperation with the institutional staff make recommendations to the Board which may or may not be accepted. Increasingly, an effort is being made to develop a programme, a prescription in a sense, for each inmate as he enters the institution. Ideally the parole service staff should be involved with the institutional staff and the inmate himself in the developing of this programme prescription. As the inmate proceeds successfully in achieving the desired programme, parole should become the obvious continuation of the institutional experience.

It is obvious that the institutional and parole service staff related to that institution will come to know the inmate and his achievements very well and should be in the best position to judge his suitability for release by parole at the most appropriate time in his institutional programme and with due regard to his community situation.

Hence it is suggested that responsibility for day parole (except in cases involving Cabinet approval) and the parole of inmates sentenced to two years imprisonment be placed jointly on the institutional director and the district officer of the parole service. These officers will receive the case material and recommendations from the institutional classification staff and the parole service representative in the institution. In the event of disagreement between the two the inmate should have the right to a review by the Parole Board to whom the matter should be referred for a decision. This places the Board in no more difficult a position in regard to staff than in its present practice which calls for consideration of staff recommendations.

Parole of all other inmates over a two year sentence would then remain the responsibility of the Parole Board. This would include inmates sentenced to preventive detention, life imprisonment and special cases. But in this way the paroling of the shorter-term inmates, where timing of programme activities in the institution becomes important and must be very flexible, would be more related to the institutional programme. The work load of the Board, which is indisputably very heavy, would be materially reduced.

This might appear to weight the decision-making more heavily in regard to institutional factors and might lead to an institutionalization of the process. The impact from the community through the parole service officer would be most important in counteracting such a possibility. It is important to distinguish between institutional adaptation and the progress of inner change by the inmate as revealed in his interpersonal relationships and the achievement of programme objectives. These should lead to consideration of his potential ability to function in the community rather than in the institution. Considerable weight should be given to the community assessment which indicates the support available in the community to aid his parole performance.

It is sometimes charged that the Board does not release inmates who have little in the way of resources in the community as revealed by the community assessment. In such cases the attitude has been to parole the inmate placing reliance on the parole supervision of a sponsoring agency. The after-care agencies and the voluntary residential houses have made a point of offering assistance to such men. This liberal attitude of the Parole board in such cases disproves the charge that only the more financially secure middle-class inmate is being paroled. These represent a minority of the parole caseload. Most other parolees are more anonymous in their neighbourhoods which are in any event more tolerant of their values and their criminal record. They can usually find work of a labouring or semi-skilled nature more easily than the white collar parolee who seeks professional or commercial employment and encounters a great deal of prejudice.

The Parole Board is engaged in one of the most difficult tasks in predicting human behaviour. The uncertainty of doing this in regard to often unknown and untried situations in the community involves prediction as to the transition from prison adaptation which is in itself unnatural to community adaptation which is fraught with pressures and tensions and temptations. If in some way an inmate could give visible signs of his inner readiness beyond verbal protestation the task would be easier.

The Parole Board are dealing in the main with the most difficult type of person in our society. Many of them are defined as character disorders or psychopaths who are described as follows in an article—Conscience in the Psychopath by P. Greenacre in the *American Journal of Orthopsychiatry* of July 1945 at page 495: "Behaviour is marked by impulsiveness and marked irresponsibility, intense but labile emotional states, and generally quixotic and superficial love relationships. . . . not deliberate offenders; they lie and steal impulsively, especially under pressure. They sign bad cheques or impulsively forge another's name, marry on the spur of the moment, and as often impulsively run away from a marriage or a job. . . . live in the moment, with great intensity, acting without plan and seemingly without concern for the consequences. . . . lack of practical appreciation of time and the inability to learn from

experience stand out as cardinal symptoms. . . . Usually poor tolerance of pain. Alcoholism, drug addiction polymorphous sexual perversions may be associated secondary symptoms. Homosexual tendencies appear in a high percentage of cases, and there appears to be a special predisposition to homosexuality inherent in the very structure of the personality."

But in the interests of society the inmate should be released on parole when he appears most ready to face his community. This will inevitably result in a higher forfeiture and revocation rate. The more inmates paroled the greater will be the failure rate but so also will be the number of successes which are never published or publicly discussed as they lack the news value of a sensational failure. The increase in the crime rates cannot be charged to parole as the forfeitures on parole are a completely insignificant figure in the total of convictions for indictable offences. It is the reporting of a few bizarre cases involving parolees that creates the popular belief that many parolees are engaged in continuing criminal activity. The reports of parolee earnings indicate that an overwhelming proportion are engaged seriously in becoming economically productive citizens. There is small comfort in having a high success rate for a low parole release rate.

THE ORGANIZATION OF THE PAROLE BOARD

The parole service is regionalized by penitentiary areas for the Atlantic, Quebec, Ontario, Prairie and Pacific areas. They are responsible for pre-release work in their areas and the arranging of supervision for ordinary parole and day parole. Their administrative relationship is to the Headquarters staff in Ottawa which exercises a coordinating function on cases prior to decisions by the Parole Board so that a relatively common policy can be maintained. If the suggestion made above regarding decision-making were followed the parole service would, jointly with the institutional staff, be responsible for the parole granting of men sentenced to two years and for day parole. They have a further role in regard to the relationship with the after-care agencies and community organizations generally.

The Parole Board should also be regionalized into Sectional Boards of three members including its own sub-chairman; but under the coordination of the Chairman of the whole Board in Ottawa. In Ontario and Quebec, because of the larger number of inmates involved, there should be two Sectional Boards in each Province with the Quebec sections composed of French-speaking members. Each of these should be, like the other regions, composed of a sub-chairman and two members. The personnel of these Sectional Boards could be largely drawn from the present Parole Board members in Ottawa, augmented as necessary. The Ontario Sections should be resident in Kingston and the Quebec Sections resident in Montreal. This would leave only the Chairman in Ottawa to exercise supervision of all the regional Sections. As necessary he could draw on members of the nearby Ontario and Quebec Sections to deal with such other matters as the remission of corporal punishment, the restrictions on driving or any other special matters requiring a corporate Board decision. These Sectional Boards should be related to the regional offices of the parole service for the necessary support services and for consultation and recommendation as to cases in their decision-making function.

The Chairman of the Parole Board should be responsible for the coordination of the Sectional Boards but should not be charged with responsibility for the parole service which should function under the Executive Director and supply support services and case presentation and supervisory services to the Parole Board. The relationship of the Sectional Boards to the parole service staff in their regions would have to be carefully defined to avoid any conflict with the administrative responsibility of the Executive Director of the parole service.

It seems evident however that such a proposal would bring the decision makers regarding parole closer to the inmates concerning whom they are making these decisions. In addition, the parole service officer who has been interviewing the prospective parolee and developing his case file would be present to collaborate with the decision makers and to add his views in cases in which there is not a unanimous affirmative decision by the Sectional Board.

This form of organization would also bring members of the Sectional Board into closer relationship with local service and treatment personnel, both in the federal penitentiaries and provincial institutions. It would allow for the establishment of close relationships with after-care agencies and other inter-related services. It would allow for the Sectional Board to interpret directly to the community concerning the work of the parole board and service and to establish good relationships in the community. It would provide opportunity for quicker consideration and decision of revocation and suspension and such subsequent action as might be involved in these matters and would enable a face to face discussion between the parole service officer concerned with the matter and the members of the Board so that fully integrated consideration of the problem and the resulting decision could be anticipated.

Even with the reduction of the decision making load on the Parole Board which would occur if the suggestions regarding jurisdiction are followed, there would still be too few members on the present Board to carry out the responsibilities suggested above and give adequate time to the interviewing and consideration of the more difficult cases. In addition, regionalization is desirable to reduce the constant long range travel by the Board members involving extensive separation from family, friends and community activities. They are at present transients in the areas of the community in which they perform their functions. They are restricted to relatively short interviews and often work late into the night to the detriment of their own effectiveness and that of the parole and institutional staff and the inmate applicants. The Board members do not at present visit Provincial institutions nor would they be required to if the following proposal is adopted except for the establishing of cordial working relationships and interpretation.

FEDERAL PROVINCIAL JURISDICTION IN PAROLE

A strong case can be made either way for giving the federal Parole Board responsibility for all parole including that from Provincial institutions or in reverse giving the Provinces the right to deal with all parole from their institutions. The arguments pro and con are outlined in the Report of the Canadian Committee on Corrections (Ouimet) and need not be repeated. On balance we agree with the recommendations of the Ouimet Committee that parole from Provincial institutions should become the responsibility

of the Provincial authorities as an extension of the institutional programming for the inmate. The major consideration against this would be the developing of ten different parole systems in Canada in addition to the federal system. It would be difficult to secure coordination of policy and practice; but if parole is to be developed as an extension of the institutional program there would appear to be no other adequate solution despite the obvious shortcomings due to lack of equality of treatment and integration between provinces.

PAROLE PANELS IN INSTITUTIONS

The general affect of the panels of the Parole Board visiting the institutions and interviewing the parole applicant face to face has been good. The potential parolee feels that he has had an opportunity to make his case in person with the decision makers. Though it is now standard practice to give reasons for deferral or denial these are usually very general and are not always clearly interpreted to or understood by the inmate.

The inmates do not seem to hear what they are told in this regard. It is still a common complaint that they do not know why they have been turned down on their application for parole. They ask, "What is it that I am supposed to do?" They say, "I am willing and anxious to cooperate and to make the best of my situation while in the institution but I am left without any knowledge as to why my parole has been refused and without any understanding of what I can do about it." It is realized that this is a touchy question, as inmates may fasten on any statement and rationalize around it in keeping with their own purposes and attitudes. In addition, some decisions may be so heavily personality loaded that it might be threatening and damaging to an inmate to give him a complete analysis perhaps involving psychiatric evaluation. Following a refusal by the parole panel, the parole service officer should see the inmate and discuss his failure to make parole with him, giving him such reasons as the parole panel is prepared to divulge. This would require close integration with institutional staff for its treatment impact but would be very helpful not only to the inmate but to the aftercare agencies who may have been working with the inmate in the pre-parole planning stages of the process. It is very rarely that the after-care agencies are given any reasons for a negative decision concerning parole.

Some feeling is expressed by institutional workers that the parole panel comes to the institution and, in a relatively short interview, decides the inmate's fate often contrary to the recommendations made by the institutional staff who feel they really know the inmate. Sometimes the decision is also against the recommendations of the parole service staff who have had lengthy interviews with the inmate and have a substantial knowledge of his community. The staffs begin to wonder what special attributes of prescience are possessed by the parole panel and what function the Parole Board should really be performing. If the suggestions previously made for transfer to staff of the decision making power in the case of two year sentenced inmates and for regionalization of the Parole Board with a much closer relationship to the inmates and the institution were put into effect a different relationship with staff might well be expected to develop.

RELATIONSHIP OF PAROLE AND PENITENTIARY STAFF

If, as previously suggested, the parole staff should become involved in the programme prescription for the inmate at the time of entry to the institution and should follow the inmate through the various steps of his programme it appears desirable that there should be an amalgamation of the parole and institutional classification staffs so that they may work in a closely coordinated way in regard to the inmate's programme and eventual release. The danger is that the parole staff working in the institutions might become institutionalized; but they are strongly linked with the community through the District Offices and receive reports regarding the community relationships of the inmate and the social and economic climate to which he expects to return. Rotation of staff from the institution setting to the field services in the community would also be of value in maintaining a desirable balance of experience.

The actual details of the organization of such a decision would need administrative consideration; but it is suggested that the Executive Director of the Parole Service, the Director of Inmate Training and the Director of Classification of the Penitentiary Service form a Commission on Inmate Training and Release to supervise this combined staff and programme.

The institutions should base their treatment program on the expectation that they will have prepared the inmate for return to his community by the time of his Parole Eligibility Release (P.E.R.) date and that, if he has, in fact, achieved the program agreed upon, he will be paroled on that date or, on completion of the program, sooner or later.

This calls for an early study and evaluation of the inmate jointly by the penitentiary and parole staff and for a post-sentence evaluation of his community situation. There should be a determination, in cooperation with the inmate, of his program which would take advantage of the availability of the educational, industrial and vocational training resources available throughout the system compatible with his grading as to security. Unless an active treatment plan is worked out, parole may not be granted at the optimal time in the man's sentence and in relation to his program completion.

The program should be geared to the P.E.R. date rather than his release date and should provide him with the maximum preparation with marketable skills for the current employment field attainable within the time available. This is particularly important in cases requiring psychiatric, medical and dental treatment which should be completed by the P.E.R. date. Where continuing psychiatric treatment is required following release, referral should be made by the institutional psychiatrist in cooperation with the proposed community supervisory agency. This might well involve a Temporary Absence Pass to permit interview with the community psychiatrist prior to release on Parole. Such passes should also be routinely permitted to enable the inmate to interview his proposed supervisor in the agency which will be responsible for his supervision on release.

The post sentence report suggested above becomes very important in such prescription programming and is really a community assessment done at the time of admission to the

institution. This is a realistic check on the inmate's own story and the information he gives in his initial interview. It would supplement in depth the pre-sentence probation report, if available. This would be a valuable source of insight to the penitentiary staff whose orientation in the past has been institutional and it is most important that a realistic plan be built up before the inmate leaves the institution. His adaptation to the prison milieu tends to lead to an unrealistic view of the outside. For the inmate, the outside does not really exist, and there is a psychological postponement of facing what the realities of life will eventually be when he again enters the competitive social and economic community. The plan should be flexible to allow for breakdown and the inmate should be helped to anticipate a shifting and changing approach to his re-establishment in the light of the actualities he encounters.

In view of the effects of imprisonment and the emotional and practical problems to be faced on release, it becomes apparent that pre-release preparation plans an important part in the transition of the inmate from the dependency producing prison experience to the increasingly complex community. There is often a terminal period of anxiety before release and this may be heightened by the pre-release interview conducted by the classification officer. At this time the various services available to help the inmate are outlined to him and he may elect to seek help and have his name listed for interview.

The difficulty is to focus the anxiety on the significant problems the inmate will meet and to work through the false assurances of past memories and the projection of future intentions. In fact, with some inmates who state they "have it made" the problem is to create some healthy anxiety or divert existing but unreal anxieties into appropriate channels.

Inmates who have achieved an adjustment, neurotic or otherwise, to the prison life and community find it difficult to think ahead to new problems and adjustments. This threatens their present security which may have been arrived at with difficulty. The tendency is to think superficially and materialistically about survival in the free community and to postpone or avoid the basic issues of personality reintegration, renewal of relationships, development of new habit patterns and changing attitudes to criminality and authority.

For a man to involve himself sincerely and with honest interest in pre-release preparation is a decision akin to religious conversion. He is in effect acknowledging that his past way of life has been wrong, that he wants to become a "Square John" and live within the law, that he is prepared to forsake his old associates and, in effect, to bear witness to this in the prison community where many of the subtle pressures are against rehabilitation and for the maintenance of solidarity as a criminal group. In effect, the inmate who does move in this way into pre-release planning is crossing the marginal line between the inmate body and the administration though he is not necessarily identifying with the administration. He is forsaking the protective coloration of the inmate group and striking out individualistically for a new life.

It is little wonder then that many men come to pre-release preparation without having arrived at any such basic decisions. Their view is that the post release help they may receive is like a lifebuoy in the ocean or some insurance which might come in handy if the

going gets tough. Hence, the role of the pre-release worker is of the greatest importance in drawing out the attitudes and expectations of the inmate and relating them to the purposes and practices of the field services. The institutional classification staff should coordinate the efforts of the various after-care agencies in pre-release; but, as much as possible, the after-care agencies should maintain their own pre-release representatives and relationships in the institution.

The pre-release work of the non-official after-care representative is to create the bridge by which the man will pass from the institution to the community, from institutional maintenance to self-maintenance and from an ordered and organized existence to a competitive economic existence where choice and problem solving are essential to survival.

Not only may anxiety need to be stimulated and focused by the institutional representative, but the agency's policies and practices should be interpreted. This enables the man to adjust his expectations of service to the reality of agency potentials and limitations. Of greater importance is that this is the opportunity to individualize the man and his problems and see him not as a statistic but as a person.

It is at this point that the pre-release worker realizes that, in many cases, the inmate comes to the interview with little realistic knowledge of his problems or of the problems of the agency from which he may expect extravagant and unrealistic assistance. He may have beginning insight about these matters and show flashes of understanding. Skillful interviewing and careful interpretation are important to foster such insight, and careful evaluation is needed to avoid the trap of thinking the interview to be more successful than it really was. Apparently insightful behaviour may speedily disappear on return to the prison population or on eventual release. The inmate may come to the agency as though the pre-release interview had not taken place. Then, once again, the agency worker must re-interpret and seek to induce recall of pre-release planning so that the current programme can go forward.

Full documentation should flow from this pre-release period to the after-care agency for use in the community branch to which the man intends to go. When this occurs before he is released, there is opportunity for that branch to raise questions about the man, his problems, his plans, and his resources. Thus, before the man leaves the institution, he knows that he is going to meet a worker by appointment; he knows that the worker knows about him and he in turn knows about the agency.

A recent study of Prisoners Perceptions of Parole was made in the Ontario region by Lois James of the Institute of Criminology of the University of Toronto and published in December, 1971. A number of significant inmate attitudes were expressed. "Sixty-one percent of the sample and 32 percent of parole applicants claimed to have seen no one from an outside agency. Of those who had, 49 percent mentioned the John Howard Society". In this connection, it should be remembered that the non-official agencies become involved in parole preparation with inmates only on referral of the case by the Parole Service.

This referral usually involves a community assessment in which an appraisal is made of the inmate's family, job, community assets and liabilities with an estimate of the practicality of his plan. This also involves an interview with the inmate by the after-care

representative in the institution. This information is all summarized and a report is made to the parole service with observations regarding supervision. If the parole is granted and the agency is asked to supervise, the inmate is again interviewed with the focus on the agency's services, the process of supervision and the inmate's plans.

In some cases men who had their parole revoked by the Parole Board blame the supervising agency. It is easier to project blame on someone else than to accept it and deal with it internally. When such revocations and failures occur among men who are status figures in the inmate population, it causes much comment among staff and inmates and creates the need for constant interpretation by the after-care agency. This is difficult since confidentiality prevents disclosure of case records except by official channels, and direct refutation of the man's story would create further defensiveness on his part. Over the years solid, accepting agency service will have to demonstrate its own worth.

The inmate should make his application for parole at least five months prior to his P.E.R. date. This is at one-third of sentence or four years whichever is the lesser and for two year sentenced inmates at nine months. Inmates undergoing preventive detention are reviewed annually and those undergoing life imprisonment at seven years or ten years in the case of committed murderers. The referral to the after-care agency is scheduled to be made at two months prior to the P.E.R. date giving them one month to make the community assessment and return it to the parole service. This scheduling is inadequate and should be advanced one month giving two months for the making of the investigation in the community, a discussion of this with the inmate, the reorganization of the plan if necessary and the compilation of the final community assessment report for the parole service. This would then still leave one month for the preparation of the case presentation for the Parole Board panel by the parole service.

But even the present timing does not always happen and in some cases the community assessment may not be available to the Parole Board panel. Many things may delay the referral from the parole service. The inmate may not make his application at the stated five months date in advance of his P.E.R., there may be delay in the institutional reports, there may be complications in his plan, the parole service staff may be under heavy work pressure or may be reduced by illness, vacations, transfer or resignation.

The same problems beset the after-care agencies in the community. These assessments are sometimes most difficult to complete as the persons concerned are not available on demand as the inmate is in the institution. Friends, relatives, prospective employers often have to be traced. Sometimes they have no telephones to facilitate the arranging of appointments. Sometimes they are not anxious to cooperate. Frequently they may be absent from home for a period of time. They often delay or do not reply to letters. All these factors complicate the agency's task and may cause delay.

Frequently the referral is not made till some time after the standard two month referral date and in a significant number of cases not longer than a week or ten days may be given. Cases have been referred after the P.E.R. date. This means that the agency has inadequate time to complete the enquiry and return the report one

month before the P.E.R. date and sometimes it is not available for the Parole Board panel hearing. The panel is naturally perturbed to find the community assessment not available and may not be informed as to the real reasons and the problems encountered. They may find it necessary to defer their decision which is hard on the parolee. The blame for this situation tends to be focussed by the Parole Board panel, the parole service, the institutional staff and the inmate on the after-care agency without knowing or considering the facts in the specific case.

It should be made clear that, as specified in the agreement between the parole service and the after-care agencies, the referral or the actual supervision of a case may be withdrawn from the agency by the parole service. In cases of unexplainable delay this should be discussed with the agency and such action taken.

The referral information from the parole service is sometimes inadequate in important respects and does not include the police report which has long been requested by the agencies. Reasons for deferment or denial of parole are not communicated in most cases to the agencies. This would be desirable to enrich the discussion with the inmate and his relatives in the community to help them understand the decision and work towards a more favourable understanding of the Parole Board and the function of parole.

The present timing should be advanced about a month to enable the necessary steps in the case preparation to be accomplished in a responsible way. In addition, further flexibility is desirable in fixing the parole date to allow for the completion of courses, the enrollment in new courses or the acceptance of special employment opportunities.

TEMPORARY ABSENCE AND DAY PAROLE

Considerable confusion exists in the present practice of these two programmes and this should be cleared up by a clear statement of their respective objectives and the practical procedures. Temporary absence is authorized under Section 26 of the Penitentiary Act and may be granted by the officer in charge of the institution "for humanitarian reasons or to assist in the rehabilitation of the inmate". This has been construed to permit continuous work or education made possible by the repeated issuing of the Temporary Absence Passes "back to back". While such a programme is very desirable to enlarge the opportunities for the inmate and to test his responses in the community it has resulted in the institutions, in effect, running their own small parole service. We suggest that the continuous use of Temporary Absences be restricted to cases involving compassionate and humanitarian reasons and for short leaves for home visits.

Day Parole is authorized under the Parole Act and is granted by the Parole Board. This frequently causes delays when the institutional head has a job or a course available for an inmate. We suggest that Day Parole be removed from the responsibility of the Parole Board in the first instance and that it be granted with the mutual agreement of the institutional head and the institutional parole head. An exception would be in regard to cases which require Cabinet approval for release. In the event of their failure to agree an appeal for review should be available to the Parole Board. It may be argued that this places the Parole Board in the position of over-ruling the staff representatives but they are doing this now in

decision regarding Full Parole. The supervision of the Day Parolee should be carried out, if in the local community, by the institutional staff, or in a more distant community, as arranged by the parole staff.

There should be no conflict in this suggestion with Full Parole awarded at the time of the Parole Eligibility Release Date. Day Parole is granted in a local community adjacent to the institution for work or education. Full Parole is granted to the inmate's home community or to the community of his chosen final destination which involves an entirely different set of considerations due to the relationships with family, friends and employers. Hence it would appear to be appropriate that an inmate be suitable for Day Parole but not for Full Parole and that in the event of denial of Full Parole he might quite logically be continued on Day Parole during the duration of his work opportunity or educational pursuits pending release at expiry of sentence under Mandatory Supervision.

PAROLE SUPERVISION

The after-care agencies have been providing parole supervision for over twenty years and the expansion of the parole system has rested primarily on the field services provided by these voluntary agencies who now supervise between forty and fifty per cent of parolees and are therefore meeting a major part of the need for parole supervision as well as general after-care in Canada.

This has been accomplished in the past with limited governmental assistance of a financial nature and logic would not seem to suggest changing a parole supervisory system based on a partnership which has proved its merit and which continues to do so. Certainly, as it is now doing, the government should assume a greater part of the burden in the financial responsibility for parole supervision and for after-care services generally.

The expansion of the staff of the parole service to perform the functions it already carries out and such other procedures and authoritative functions as are necessary is most desirable. While the government is morally and legally responsible for the supervision of parolees it should not be assumed that it must do the total job of supervision with its own service but rather that it should utilize all available and competent supervision from the private sector. The cooperative partnership arrangement now in effect with the after-care agencies should continue with great mutual development.

It is important to suggest that parole represents more than the legal terms would suggest that "parole is no more than the fulfillment of a sentence outside the prison walls". Those of us who have been intimately involved in parole supervision are convinced that a great deal more is involved. The entire question of the adjustment of the individual in the community is involved. The question of protection for the community is uppermost. The need for the ex-offender to find a suitable means of meeting his problems instead of turning to anti-social behaviour is involved. The problem of becoming socialized, of developing mature responsibility, of realizing the rights of others, of overcoming anti-social propensities is involved. The relationship of the parolee with his supervisor is of paramount importance. The ability of the supervisor to influence the behaviour of the parolee is critical. A parolee requires much more than surveillance which perpetuates the legal or custodial aspects of the supervisory relationship. The development of a sense

of personal responsibility, of ability to meet problems and frustrations in a law abiding manner all are part of parole supervision.

In every human being there are problems hidden under layers of protective covering to shield him from his fellows and these layers have to be peeled away to reveal these problems if effective intervention is to come from the parole supervisor. Thus a Pandora's box of emotional responses to life situations awaits release. If the control function of supervision is emphasized the result is repression of the very problems which are the cause of the reactive behaviour of the parolee. The philosophy of the social work or treatment approach is to release these emotions and to deal with them constructively in a problem solving way so that the parolee may gain insight as to his motivations and his acting out behaviour and form new objectives based on his developing insights into his interpersonal relationships. Parole supervision must be interpreted primarily as restorative and secondarily as control if lasting values are to be achieved for the community. This involves a long term rather than a short term interpretation of the value of supervision.

Supervision of parolees by after-care personnel has proved its merit and the suggestion that government officers would protect society and rehabilitate offenders more efficiently than private officers under independent control seems to be without foundation. No evidence or study is known to substantiate this view but rather from the experience of the after-care agencies we believe the weight of evidence indicates that community participation is virtually indispensable. This would seem to be confirmed by the study by Vickert and Zahnd previously cited.

We recognize the need for a federal parole system so organized that coverage will be available in a variety of ways in all parts of Canada. Where it is possible for the after-care agencies to provide effective and acceptable parole supervision it is the feeling that the cooperative relationship with the parole service should be continued and maintained and that effective criteria for selection of the respective cases for supervision should be developed.

The implication is sometimes made that the after-care agencies apply regulations with varying procedures of efficiency due to the qualities of their staff. This suggests that there is wide variation and practice. Undoubtedly, there may be some areas that need strengthening in the after-care services but it is suggested that these could be developed cooperatively with the Parole Board by the development of standards generally in the relationship of the parole service and the after-care agencies. However, the diversity and variety of skills and resources which the after-care agencies bring to parole supervision in their respective locations will out-weigh any lacks in meeting a rigid uniformity of practice. In fact, the participation of the after-care agencies in parole work brings an independent point of view which may materially assist in the developing and improving of the parole service in its community outreach as distinct from its administrative aspects.

Every Province has parole supervisory services available from after-care agencies and because parole supervision should be ideally intimately related to the community and to the circumstances under which a parolee lives it would seem that the voluntary after-care agencies can perform this function very appropriately and adequately bringing diversity of skill and talent to the total enterprise. Further there is a view that psychologically the acceptance by the

parolee of a non-government supervisor is more ready and renders possible the development of a more effective relationship since it is apart from the legal and authoritative involvements which he has experienced heretofore in the correctional system.

There is no assurance that a governmental body would assure more reliable or prompt service. In fact there are evident lags in the operation of the government service at the present time which are probably just as serious as any lags presented in the timing of the operations of the after-care agencies. Any difficulties in the ability of the after-care agencies to accept parole supervision or to provide community assessments within given time limits could be resolved by proper agreement with the parole service with regard to the difficulties involved in these various functions.

It is suggested that sometimes information is not shared between the after-care agencies and the parole service; but those of us in the field have found that there is little if any problem in this area and that it is the general practice of the after-care agencies to share completely with the parole service in regard to developments affecting parolees. Maintenance of standards in this regard in the after-care agencies and in the relationship to the parole service would be fairly easy to ensure by effective conferencing of the desired cooperation.

The after-care agencies provide an essential ingredient in the correctional and social welfare fabric through their intimate associations in the community with the other community services, their relationship to employers, their use of volunteers and the lay constitution of their Boards of Directors and Committees. The process of restoration of the offender is essentially a community based operation and should involve an integration of community services which the after-care agency is peculiarly fitted to perform.

The first problem faced by the ex-inmate is survival regarding food and shelter which involves immediate financial assistance which the after-care agencies have budgetted for years to supply as part of the case-work process. Security is the next need and this means employment in which the counselling process and their relationship to employers have enabled the after-care agencies to play an important part. Then comes the need for community acceptance and self actualization in inter-personal and community relationship. Many men remain as clients of the after-care agencies after their parole requirement has been fulfilled.

Those working in after-care know that in too many cases they are dealing with the chronic failures of society whose institutions have not been able to play their usual part with the offender who has often rejected them and the efforts of those who would have helped him. There is frequently further deterioration due to the artificial environment of the prison. Failures and breakdowns are to be expected despite the efforts of all those engaged in the correctional process and blame should not be cast at any one aspect of it particularly in the parole function which is part of a total process engaged in the adaptation to his environment of what is usually a socially damaged human being.

That there is great success is indicated by the statistics of an employment earnings study of parolees made in June, 1971. There were 2603 parolees studied and of these 2078 or 78% were working at that particular time. Their average income was \$412.00 per month which meant a gross income for the month of \$857,000.00.

They had 2779 dependents who might otherwise in most cases have been recipients of public assistance at high cost to the taxpayer. There was actually a total on parole in that month of 5257. The projected earnings, on which taxes were paid, were approximately \$12,000,000.00. The cost of imprisonment in 1971 was \$10,400.00 per inmate per year and the cost of parole was probably in the neighbourhood of \$1,000.00.

In 1964 a study was made by A. Andrew, of the School of Social Work in Toronto of all clients from the three Kingston penitentiaries and served by the John Howard Society during the period of ten months and followed up from 18 to 24 months after release. The R.C.M.P. made a fingerprint check for convictions for either indictable or non-indictable offences during this period. Sixty-two or 39.75% of 156 studied has no record of recidivism during that period. This compares most favourably with the recidivist figures for admissions to the penitentiary for the same year 1964 which showed that 77.2% had been in some type of penal institution before and 41.1% had been in a penitentiary before. It was also found that 44.6% of the recidivism took place in the first six months, 75.5% by the end of one year and 97.9% by the end of two years. This indicates that further recidivism will be slight after two years so that parole supervision and conditions may be greatly relaxed at that time. It further indicates the great importance of immediate and intensive supervision in the early period of parole following release. Beyond a certain point supervision, from a treatment point of view, serves no useful purpose and termination of parole supervision by the Parole Board on recommendation of the supervisor should be discretionary even in the case of long sentences and life sentences.

The problem of coverage in rural areas remains. It has been the policy of the after-care agencies to recruit "Associates" or in small centres "Volunteer Branches" to assist in helping returning inmates. Much good work has been successfully accomplished by these citizen volunteers under professional supervision.

It is obvious that these societies bring a community involvement into the corrections field that is most important not only to the program of service for ex-inmates but also in the area of penal reform. Arising from the experience of the service relationship to inmates and ex-inmates these citizen groups arrive at informed views concerning the correctional process and services which they are free to transmit to responsible government officials in the form of constructive suggestions for change. When made known to the public these views may create a readiness for change that makes it possible for the government services to move progressively. Unquestionably there is a unique role which complements the government services to the benefit not only of the ex-inmate but the community as well.

CRITERIA FOR ASSIGNMENT OF PAROLE SUPERVISION

It is suggested that criteria should be mutually developed and agreed upon by the parole service and the after-care agencies to assist in the selection and assigning of cases for after-care supervision within the fifty per cent distribution now agreed upon. This is if the maximum use is to be ensured of the resources of the parole service, the after-care agencies and other supervisory services. Such criteria might be based as far as assignment to after-care agencies is concerned on several principles:

(1) Where there has been an involvement in his situation of the after-care agency by the inmate, or his family, or some other interested agency or person such as an employer.

(2) Where there is obvious need for the involving of a variety of community resources which the after-care agency can mobilize as being part of the fabric of community services.

(3) Where there are obvious inter-personal or inter-familial relationship problems which the after-care agency can approach through its casework or group work services.

(4) Where there are evidences of personality disturbance or deterioration involving the need for collateral psychiatric service to support the casework service of the after-care agency.

CONTENT OF PAROLE SUPERVISION

The content of parole supervision is most difficult to define since it is highly individualized and dependent on the relationship which can be developed between the parolee and his supervisor. Relationship as developed in the one to one interview situation is the primary tool of social work. Hence it is our view that professional education in social work offers the best preparation for those who would work in parole and after-care. The use of groups in the re-socialization of the parolees should be given increased recognition as an important complementary treatment facility.

In general terms it may be said that persons who violate the criminal law are persons who have been "damaged" in the life process of growing up. Most citizens whose families are seriously disorganized or whose lives have been bitter and hostile do not resort to crime. Neither do the majority of those whose economic circumstances may have reduced them to the verge of hunger or want. There are appropriate social and welfare agencies to which most such distressed citizens turn. To deal with people in such straits is a difficult enough task; but it is increasingly difficult to deal with those who have crossed the bounds of behaviour within the law and experienced the process of law enforcement and penal incarceration. In most cases these become "doubly damaged" persons. Something additional happens to them in the penal institutions which scars internally and leaves the external stigma of "ex-convict".

This work is highly specialized and demands the utmost of skill on the part of professional staff and those exceptional volunteer workers who by personality and experience are suited for the task. This is social work as practiced in one of the most difficult of settings and not every willing volunteer or professional is suitable to practice.

The personal interview is the basic technique of social casework. In this face to face relationship there may be brought about release of emotion, revelation of need, planning the practical steps in rehabilitation, and support of faltering purposes and flagging determinations. The case-worker must be able to absorb bitter frustration and open hostility, misrepresentation and direct deceit, demanding and threatening requests for assistance, or, at the other extreme, helpless and ineffectual dependency.

Material assistance should then be used only as part of a total plan of rehabilitation in which worker and ex-inmate participate. The way material assistance in small amounts is used by the

ex-inmate is often the most valuable index of his cooperation and potential success. The giving of "hand-outs" unrelated to the broader casework approach may often do more harm than good.

Many of these men have lived highly transient lives and a number of them wish to break off all relationship with the penal past at the earliest opportunity. Many who have made pre-release plans involving stipulated residence or employment suddenly want to vary their circumstances by the widest and wildest ideas.

One interview at least every week at the start of the parole is suggested as the basic minimum for the exercise of acceptable supervision. In actual fact there will usually be more interviews than this and as many should be arranged as is necessary in each case. It is essential to ensure that supervision of the parolee is no cursory matter. The parolee should be obligated to make his first report within three days of reaching his destination.

As the relationship progresses and the parolee finds increasing integration in home, job and community it is wise and desirable to "taper off" the number of required interviews to the maintaining of essential contact between parolee and the supervisory worker. Provision should be made for the reduction of parole conditions and eventually for the official termination of long-term paroles or those in special cases where the adjustment of the ex-inmate is obviously excellent and it is unlikely that the parolee may resort to crime.

PAROLE CONDITIONS

The purpose of parole conditions is to set the framework within which the relationship between the parole supervisor and the parolee will develop, to provide realistic guidelines for the parolee, to clarify for him the expectations of the contractual relationship, to remind him of the responsibilities he has undertaken upon signing the parole agreement and to hold him accountable for his behaviour. The parole conditions should be explained to the parolee and he should be given time to consider them before he signs the agreement assuming the responsibilities of the contractual relationship.

The current conditions do not appear to be unnecessarily rigid provided opportunity is afforded the supervisor to exercise discretion and discuss the practical application of the conditions. If specific conditions are anticipated it would be helpful to those carrying out the community assessment and institutional inquiry to be informed so as to assess the probable effect of their imposition. It is desirable to have some objective factors which can be discussed with the parolee in regard to his behaviour and which can be interpreted in ways which he can understand without depending on subjective judgements as to his total reactive behaviour pattern.

While these conditions appear reasonable in that the parolee would otherwise be in prison they are certainly far more restrictive than the way of life of an ordinary citizen. These conditions should be interpreted as guidelines for conduct and when violated should be used by the supervisor as part of a learning process rather than as a basis for arbitrary action. The parolee, being human, will make mistakes and should not be expected to learn or practice immediately the appropriate socially acceptable behaviour.

There appears to be a general feeling that the "abstinence" clause is used too frequently under Clause 8 of the Parole Agreement and that it would be better to handle the problem of the use of alcohol

under Clause 7 which is discretionary and, by agreement of the supervisor, would permit social drinking which is in general vogue in contemporary social relationships. The "abstinence" condition tends to set up a barrier between the parolee and his supervisor since the parolee knows he may reveal breaches of this condition only on pain of revocation. This prevents constructive use of this behaviour within the supervisory relationship. Hence the "abstinence" condition should be imposed only in cases where the discretionary use of the powers under Clause 7 have proved ineffectual.

Provision should be made for the review of conditions with the objective of their relaxation as the parolee gives evidence of satisfactory adjustment and thus can be encouraged in his developing citizenship. Procedures for the termination of conditions should be made and also for the termination of parole when it has become obvious that the parolee has achieved a satisfactory degree of adjustment in the community. Termination should also apply to offenders paroled on preventive detention or life sentences. A way should be found of avoiding the constant jeopardy, under which they are forced to live, of return to prison for violation with the old sentence still hanging over their heads in addition to the new sentence which may be for a relatively minor offence.

CASELOAD

The question of caseload depends on a number of factors relating to the ability and experience of the parole officer, the nature of the caseload, and the expectations on him as to content of supervision which may be a very intensive treatment relationship or of a perfunctory reporting nature.

An average of twenty interviews a week appears to be a reasonable assignment of time by a worker to direct service in relationship to the other components of his responsibility. The minimal supervision that could possibly be accepted would be one interview per man per month and this for well-stabilized parolees. A current all stages caseload of forty cases would mean a minimum of forty interviews per month. A normal load assignment of twenty interviews per week would provide eighty interviews per month. This would leave forty interviews available over and above the minimum number of forty to apply additionally to beginning parolees or difficult cases. Hence a caseload of forty parolees in varying stages of their parole and degrees of supervision should be the maximum full time caseload.

REVOCATION AND SUSPENSION

Revocation is a Parole Board decision but it should be preceded by suspension unless clear violations have occurred regarding which warnings have been issued and ignored by the parolee. If there is a clear danger to the community, revocation might be justified without the first step of suspension which is seen as both a treatment and a control device. Suspension has the advantage of taking the parolee off the street and showing him that the matter is considered serious; but allows for a close examination of attitudes and circumstances and for release once again based on a new treatment plan. This calls for close coordination and definition of roles between the supervisor and the parole service officer who has the power of suspension. Swift action may be needed to lift the suspension quickly so that the parolee, who is working and discharg-

ing some of his responsibilities, can be restored without loss of these functions.

Revocation generally occurs where there is a behavioural problem rather than a violation of the law than would call for forfeiture which is incurred on the conviction for an indictable offence for which the offender is liable to imprisonment for two years or more. Hence revocation should be considered where the parolee's behaviour constitutes a threat to society, negates or drastically reduces the value of parole supervision; or is essentially damaging to the parolee himself.

There have been long delays on some suspension cases when the Parole Board is required to make a decision as to revocation. This may extend the suspension beyond the fourteen day period which is within the authority of the parole service officer without reference to the Parole Board. This should be avoided at all costs as it is a period of great uncertainty for the parolee involving all his relationships in the community. If the suggested changes in regard to the respective functions of the Parole Board and the parole service staff should come about the process of revocation should be accelerated.

It is sometimes suggested that parolees should have the right to appeal with counsel to the Parole Board in case of suspension. This overlooks the fact that this is part of a treatment which is preferable both from the point of view of the parolee, who might face far more serious consequences, and of society which again may suffer the consequences of another criminal act.

The case of revocation is, however, somewhat different and there would appear to be justification for an immediate hearing of the inmate by the Parole Board panel if possible at the time of revocation if this could be done without undue delay or, at least, by way of appeal at an early date. At present the inmate may ask for a hearing at the next meeting of the panel in the institution which may be as much as two months later. This is a long time to spend in custody, particularly if the parolee is bitter about the procedure and reasons for his re-incarceration. The use of counsel at such a hearing or appeal is not considered desirable as this would introduce an adversary procedure into what is essentially a treatment process based on cooperation by all parties in the interests of the parolee and the community.

LOSS OF REMISSION

The provision that the parolee loses his statutory and earned remission if he is returned to prison seems illogical since, while on parole instead of in prison, he is still serving the time to which he was sentenced. It seems more equitable that he should be credited with all the time he is able to serve in the community without being convicted of breaking the law or violating his parole conditions. Hence on return to the institution he should have to serve only the remainder of the time specified by the Court.

It can be argued that such a procedure would remove the main sanction towards good behaviour while on parole. At present the parolee has a great deal to lose in the event of revocation or forfeiture. But this is emphasizing the control aspect of parole and neglecting the positive restorative aspect in which he is rewarded day by day as he successfully completes his agreement in a cooperative way. It is also anomalous that, once served, the penitentiary

service cannot take away earned remission but that under the parole regulations this can be done.

STATUTORY SUPERVISION

This affects the period during which, in the past, no further controls nor obligations were placed on the ex-inmate following his release on expiry of sentence which occurs at the time when his combined earned and statutory remission are deducted from his legal sentence. Since he is credited with twenty-five per cent of his sentence on entry to the penitentiary and can earn three days a month earned remission, it means that his expiry date is roughly at about two thirds of his sentence.

The inmate is given no choice regarding mandatory supervision and unlike the parolee makes no contract with the authorities in which he is, in effect, saying that for extra time granted on parole he will abide by the parole conditions. The inmate under mandatory supervision is subject to the same conditions and penalties as a parolee including reporting to the police and to parole supervisory officers.

It will probably be found by experience that reporting to police or supervisors will be most difficult to enforce since these men are so highly mobile and transient that many of them would not make such reports on a consistent basis. To make the program meaningful and effective the parole service would be under obligation to issue warrants for their arrest and undoubtedly many such warrants would be outstanding from coast to coast.

In the Study previously cited by Lois James there seems to be some corroboration of this view: "Inmates generally felt that other prisoners would have the most difficulty in keeping rules about drinking and getting drunk, but saw their own major problem as "not leaving the town or city". While many inmates considered employment as important in obtaining a parole, most of them claimed that employment was not difficult to obtain or to keep". Experience to date appears to indicate that the assumption as to mobility is correct.

Reporting to parole supervisors on this statutory basis would probably be of a perfunctory and minimal nature more resembling "checking in" than supervision as it is now understood and practiced in relation to parole cases. It is unlikely that there would be as careful individualizing of the inmate's needs, plans and potentials or the development of an effective supervisory relationship having meaning and content.

We suggest that it would be possible to obtain the desired control by designating this as a period of "conditional freedom". If during this period of "conditional freedom" the ex-inmate should be convicted of another indictable offence it would be quite feasible to amend the regulations so that he would forfeit, without further judicial procedure, the remaining part of his "good time" and serve it consecutively with the time awarded under the new sentence. This would effectively penalize those who do offend and would provide a strong deterrent for all men released under such "conditional freedom". It would have the advantage of being enforceable and would necessitate no administrative organization nor cost.

As the institutions improve their methods of diagnostic appraisal and their training and treatment programs, the number of men

paroled should correspondingly increase. The hard-core group, which has been a major problem, should be restricted, segregated and eventually matured or otherwise worked out of the system without again developing to anything like the degree that has pertained in the past. They would, in any event, fall under the category of "conditional freedom" and still be subject to its sanctions.

THE SIGNIFICANCE OF FAILURE RATES

Obviously as the use of parole increases, revocation and forfeiture rates may be expected to rise. Despite some recent incidents, which have created public concern, in our view the public and the correctional services are prepared to accept this and to look realistically at this probability. The real usefulness and test of parole will come when we are paroling a majority of the inmate population. This will take time and various developmental steps to ensure maximum effectiveness.

A report in *The Globe and Mail* of March 9th, 1972 that parole rules are to be tightened due to an increase in the violation rate of 50%, should receive some comment. It appears that more emphasis is to be placed on the control aspects of parole than on its treatment aspects in the restoration of the inmate to his community through parole as part of the total correctional process. Both society and the inmates have an interest in such a policy decision since the true protection of society lies in the return of the inmate to the community a changed individual being given the maximum support and assistance which can be provided by parole.

As the programming for the inmate in the institution becomes based more on an individual prescription for his achievement the expectation of parole becomes implicit in such a course of activity. Parole is part of correctional treatment and as such there should be a change in the method of its evaluation from discussion of a failure rate of fifteen per cent to a treatment success rate of eighty-five per cent. If the Parole Board continues to measure the effectiveness of its decision making on the basis of a failure rate, the general public and the media must be expected to think also in such negative terms.

The so called failure rate is, in fact, a reflection that the treatment process, when extended into the community by parole, is functioning as it should in that under testing some parolees will once again resort to illegal behaviour or will have been revealed, under effective supervision, to require a further institutional treatment experience. This indicates that the field services are performing their function with a high degree of effectiveness which with increased staff and improved training and experience may well be contributing to the higher violation rate.

It should be remembered that this so-called failure rate includes both forfeitures for the commission of another indictable offence and revocations for inability to accept the controls and treatment inherent in the supervisory process. These two factors have been usually about equally represented in the failure rate. Hence with a failure rate of fifteen per cent only about seven or eight per cent have been returned to prison as a result of the commission of another offence. This represents a remarkably low number of parolees.

It is obvious that as more inmates are paroled the opportunity for failure to occur increases. But while the failure rate may increase, there is also an increase in the absolute number of parolees who prove successful. This is a social gain which should be stressed. In any event it is improper to judge return to prison as failure since many individuals may need a further period of institutionalization to consolidate very real learnings in social behaviour that they have made either under parole supervision or voluntary after-care. On a subsequent release they often are able to make a satisfactory adjustment to community living and legal expectation. Hence re-institutionalization should be treated as relapse is treated in the medical management of a patient which sometimes necessitates rehospitalization.

Testimony has been presented to you indicating that few inmates are dangerous to the public and that too many offenders are being imprisoned. For the same authorities to reduce the granting of parole to the majority of inmates who they say are not dangerous seems contradictory. An analysis of forfeitures would probably show that the majority were for relatively minor offences against property and not involving violence.

The alternative to parole is now Mandatory Supervision which will involve the same conditions of supervision in the community as parole. But the inmate is given no choice about accepting this programme. When he reaches the end of his sentence, less his remission, he is released under mandatory supervision and must accept the conditions whether or not he so chooses. This will probably result in him being less likely to view it as part of a treatment process than as a control mechanism and the content of the supervisory relationship is likely to be materially reduced. Hence it is at best a more rudimentary form of post release treatment than parole in which the inmate makes application to be released earlier than under mandatory supervision and for this privilege agrees to accept the supervision of the field services.

If parole is reduced more inmates will perforce be released under mandatory supervision. If they are returned to prison their failure will not be charged against the Parole Board or parole service since there was no selection or decision-making involved. But it is surely small comfort to all concerned and particularly to society at large to have a low failure rate on parole due to the paroling of a relatively small number of inmates and shifting the failure rate to mandatory supervision with a high failure rate.

In an editorial on March 13th, 1972 the *Globe and Mail* takes issue with a specific case but comments on the decision by the Parole Board to tighten its standards for the granting of parole following a fifty per cent increase in parole violations during the past year. In commenting on this decision they wrote—"Given our jail system, and given human nature, a certain amount of recidivism can be expected. Parole is a procedure which has much to recommend it and we would not suggest its limitation merely because some people are certain to abuse it." We agree with this statement which strongly supports the position we have taken regarding this aspect of parole policy.

An increasing number of inmates should be paroled as improvements are made in the treatment programmes in the institutions and in the development and effectiveness of the parole field services. It is essential then for all concerned to think in terms

of treatment success and to publicize this rather than failure rates so that the Society will come to understand that parole is a positive part of the total correctional treatment process in which the public have a vital supporting interest.

PROBATION FOLLOWING IMPRISONMENT

Section 638-B of the Criminal Code provides for probation following imprisonment which is an unfortunate substitution of probation for what should be a parole function. It disregards the nature and effect of the prison experience on the individual which should be considered before providing for release under the conditions of parole.

The general practice of the Bench in using this section seems to be to impose a relatively short prison experience followed by a longer period of probation. This tends to emphasize the more harmful effects of imprisonment without allowing time under our present prison organization for much constructive training. It is further a negation of the very concept of probation which is designed to avoid imprisonment and ensure supervision in the community without exposure to the prison experience.

Another aspect of the matter develops if the offender fails to respond to the probation following imprisonment. Unlike parole, in which he feels he has been given a "break", he feels that he has "done his time" and should not be obliged to submit to probation conditions. He can no longer be sentenced again on the original offence and if he fails to cooperate he has to be convicted of a breach which is very difficult to do. This may result in forfeiture of his recognizance and may also result in imprisonment for breach.

This is a highly questionable practice since, in effect, it allows for the creation of an offence punishable by imprisonment at the discretion of the Judge who sets the conditions of the probation order. Failure to abide by these conditions may result in the forfeiture of the person's freedom though there is no such a crime to be found in the Criminal Code. This then indirectly involves the Judge, as he sets conditions, in creating crimes punishable by imprisonment if the conditions are not observed.

RELATIONSHIP OF PAROLE TO SENTENCING PRACTICES

In a Study of Sentencing as a Human Process published in 1971 by the Institute of Criminology at the University of Toronto, John Hogarth found some interesting correlations:

"Magistrates were asked to indicate whether they adjusted their sentences in the light of the possibility of parole being granted. Two out of three admitted that they sometimes increased the length of sentence imposed. The reasons given were interesting.

"Of the forty-two magistrates admitting to this practice, twenty-one (50 percent) stated that they did so in order to give the

institutional personnel ample opportunity to work with the offender, in hopes that he would respond quickly and be considered for early parole, but in the certain knowledge that if he did not respond, he would be kept inside.

"Nine magistrates (21 percent) stated that they often considered parole when imposing a long sentence directed to the deterrence of potential offenders, or when forced to do so by reasons of aroused public opinion. They would immediately write to the Parole Board requesting that the offender be considered for parole. In this way they felt that they could appear to be punitive without serious consequences to the offender. The difficulty with this policy is that parole is a matter for the complete discretion of the Board, and there are no guarantees that the magistrate's recommendations will be accepted.

"Twelve magistrates (29 percent) admitted that they increased sentences in order to ensure that the offender would not be "back on the streets" in a relatively short time. These magistrates are aware that parole is not normally considered until after the offender has served at least one-third of his sentence."

It is obvious that the Parole Board must have great difficulty in dealing with such differences in motivation for sentencing particularly as it is not the function of the Board to adjust sentences, but rather to predict readiness for parole and to grant it at the appropriate time. In any event it seems hardly equitable that the Parole Board should be expected by magistrates to accept responsibility for release which, to the public, may appear to negate the intention of the Court. The Appeal Courts have generally held that judges should not delegate their sentencing functions to the Parole Board.

CONCLUSION

No recommendations are made as to changes in legislation since these would follow from such changes in policy and practice as may result from the deliberations and recommendations of your Committee. The drafting of legislation and regulations then would become the task of those with such expertise in the Departments of Justice and the Solicitor General.

The opportunity to present our views on the subject of Parole, which has concerned the after-care agencies for so many years has been greatly appreciated and we trust may prove of interest to your Committee.

Respectfully submitted,

F. G. P. Lewis,
President.



FOURTH SESSION—TWENTY-EIGHTH PARLIAMENT
1972

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable J. HARPER PROWSE, *Chairman*

Issue No. 14

THURSDAY, JUNE 29, 1972

**Fourteenth Proceedings on the examination of the
parole system in Canada**



(Witnesses and Appendix—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

The Honourable J. Harper Prowse, *Chairman*.

The Honourable Senators:

Argue, H.	Laird, K.
Buckwold, S. L.	Lang, D.
Burchill, G. P.	Langlois, L.
Choquette, L.	Lapointe, R.
Croll, D. A.	Macdonald, J. M.
Eudes, R.	*Martin, P.
Everett, D. D.	McGrand, F. A.
Fergusson, M. McQ.	McIlraith, G.
*Flynn, J.	Prowse, J. H.
Fournier, S.	Quart, J. D.
(<i>de Lanaudière</i>)	Sullivan, J. A.
Goldenberg, C.	Thompson, A. E.
Gouin, L. M.	Walker, D. J.
Haig, J. C.	White, G. S.
Hastings, E. A.	Williams, G.
Hayden, S. A.	Yuzyk, P.

**Ex Officio Members*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, February 22, 1972:

With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Croll:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada;

That the said Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination;

That the Committee, or any sub-committee so authorized by the Committee, may adjourn from place to place inside or outside Canada for the purpose of carrying out the said examination; and

That the papers and evidence received and taken on the subject in the preceding session be referred to the Committee.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, June 29, 1972.

(23)

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10.00 a.m.

Present: The Honourable Senators Burchill, Eudes, Fergusson, Flynn, Goldenberg, Haig, Hastings, Laird, Lapointe, McGrand and Quart.

In attendance: Mr. Réal Jubinville, Executive Director (Examination of the parole system in Canada); Mr. Patrick Doherty, Special Research Assistant.

In the absence of the Chairman, and on Motion of the Honourable Senator Laird, the Honourable Senator Hastings was elected Acting Chairman for this day's meeting.

The Committee continued its examination of the parole system in Canada.

The following witnesses, a group of psychologists of the Canadian Penitentiary Service (Quebec Region), were heard by the Committee:

Mr. Albert Cyr, Institut Archambault;
Mr. Marcel Thomas, St. Vincent de Paul (Maximum);
Mr. Paul Bélanger, Federal Training Centre;
Mr. Clément Bourgeois, Federal Training Centre;
Mr. Jean-Guy Albert, Institut de Cowansville (Medium);
Mr. Yves Cartier, Reception Centre, St. Vincent de Paul.

On direction of the Acting Chairman, the Brief presented by the above group of psychologists is included in this day's proceedings. It is printed as an Appendix.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, June 29, 1972

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator Earl A. Hastings (*Acting Chairman*) in the Chair.

The Acting Chairman: Our witnesses this morning belong to a team of psychologists from the Quebec region, and Mr. Albert Cyr,—excuse me, Mr. Cyr, because I do not speak French well,—I would ask you, Mr. Cyr, to kindly introduce the members of your delegation to us and, next, I would ask Mr. Marcel Thomas to make a statement for us.

[*Translation*]

Mr. Albert Cyr, Team of Psychologists, Quebec Region: From various Quebec institutions, here on my right are Mr. Thomas and Mr. Jean-Guy Albert.

The Acting Chairman: From which institutions?

Mr. Cyr: from Cowansville; Mr. Clement Bourgeois of the Federal Training Centre, then Mr. Paul Belanger, also from the Federal Training Centre, and Mr. Yves Cartier over there, from the Reception Centre of St-Vincent de Paul.

The Acting Chairman: Mr. Thomas?

Mr. Marcel Thomas, Team of Psychologists, Quebec Region: Well, the basic thought of our report is to consider that parole is not a service which operates independently of penal institutions as such. We find that we cannot really have useful and effective paroles if the work with offenders does not first begin in the institutions. Thus, parole is considered as the last stage in the rehabilitation of a prisoner, and not a sort of gift or a chance to be taken, only when nothing has previously been done in the institutions. This is the meaning that we give, that is, this is the spirit that we give to our report. This is why, in our preamble, that is explained, and we find that paroles actually are based on principles which are not logical, because they do not consider the whole of the rehabilitation process of the prisoner, from the moment he enters the institution until the moment when he leaves it on parole.

Therefore, this is the spirit of our report, and this is why we have emphasized in our report that it would first be necessary to begin the real work within the institutions, and integrate the parole service within this rehabilitation work that would be performed within the institutions,

because the last stage of this work is really parole, which is in itself the logical and effective outcome.

Next, we have presented the general principles which constitute, in precise terms, the very spirit of our report. For example, that the object of parole should be connected with the goal upon which the institutions should concentrate, namely the true rehabilitation of the prisoner.

Therefore, it is thus—to summarize, after all—the role of the institution appears to us to be, and we have mentioned it because it appears important to us, the role of the institution appears to be to rehabilitate the prisoner, and we indicate in our report how we see, for example, that institutions could be classified into different types in order to then be able to rehabilitate our prisoners in an effective manner, and not to mix them all together.

With this also in mind, we see the role, not only the role of the institution, but also the role of the court, for example, and we find that, if we are truly rehabilitating, the court should be able to change its method of sentencing individuals. For example, not to give them necessarily a sentence of two years, where the candidate becomes eligible after nine months, because the real work that one can do in nine months is almost useless or non-existent. It is possible, in that time, that the prisoner will not benefit from the program given to him in an institution. If we really want to have a rehabilitation program in the institutions, the court must change; if we really want parole to work and to be effective, it is necessary to give sufficient time to the persons who work in the institutions, to really work towards the rehabilitation of a prisoner, and not then give him a parole after nine months, which appears illogical. In fact, it appears magical after all that someone would be rehabilitated from the mere fact of leaving the institution and from the mere fact that he is paroled, but this is not realistic. An automobile thief who can receive a sentence of only two years is perhaps, among offenders, the most difficult to rehabilitate, whereas the jealous murderer, condemned to a life sentence, perhaps will commit only a single murder in his life, and no others, and he will receive a life sentence, and will be eligible only in ten years, therefore, you see the result that this creates. This means that individuals, who could be released earlier, must spend ten years, whereas people who, after all are still dangerous, get out after nine months, which means that the basic principle of parole, after all, is not very logical and is not truly based on an effective work. It therefore becomes certain that, at that time, we are taking risks, terrible risks. It is certainly evident that an automobile thief is less dangerous, in a sense, than a murderer, but it still remains true that it is possible for him to continue, because a person's second offence, especially when he is young, often occurs after two months, three

months or four months following his first release. It is there that we see, all told, that nothing has been done in the institutions. They have taken a chance. They have released the prisoner, and he comes back to us. Why? Because there is no coordinated work between the paroles and the institutions, in order to really accomplish something effective. Then, if you wish, for State funds, and for the citizens, who could be the future victims, and for the offender himself who is imprisoned, at that time, in a vicious circle, I wish to say that he will perhaps not leave it for a long time: he starts at 18 years old, he will finish perhaps at 35 or 40 years. We had them sent to the institutions only in order to try to establish after that whether, on parole, he would not operate somewhat better, and we take a chance. Therefore, it is somewhat by chance, after all, that decisions are taken and risks are undertaken.

We speak of the role of other organizations. We really see the role of other organizations as necessary and important, for the moment, that is, even before the prisoner is released, during what can be called the pre-release period, but also at the very time when the prisoner is on parole; I am thinking of social work organizations; I am thinking of post-penal assistance services, and even of the police. Those people, after all, should even be brought into the institution at the beginning so that, when the guy leaves, they are already familiar with the individual with whom they worked, and they really know what he is, what he can do, what are his weak points, because we can use his strong points, and when the prisoner is released, I think he can rely on that. It is on the weak points that we can really help him. We see the role of organizations in this way. It is important that the work begin before release and that the services between institutions, the organizations that are not part either of institutions or of the parole service, that those organizations and the parole organizations are co-ordinated in an effective work, and not that each should exist separately. There is a sort of peaceful coexistence, a sort of contact which is much more a contact by letter. For example, "Would you send me a report, I do not know this person?" Things like that. I do not call that working in common with someone who exists in actual fact and who must face a challenge when he leaves the institution, and especially in the first months following his release.

Reflections on release. What we see is that what I was previously saying must continue, that sentences must take account of the need of individuals for treatment. The example that I was giving of the jealous murderer, for example, who does not need ten years of treatment in an institution. This does not take account of his need for treatment, whereas it is possible that an armed robber will perhaps need it, we sometimes give 15 year sentences to armed robbers, but perhaps, if we worked with them, they would require only 8 years. It is perhaps necessary to have a much longer sentence, for the same automobile thief, who was given two years, because he stole five automobiles, because after all he will get out only after four years, so that he will have to respect, if you wish, this need for treatment, and it will be necessary for him to respect also a period of time that will be necessary for him to situate himself in time. If you give an indefinite sentence, he panics. We suggest, therefore, that which is done in the United States, namely to give minimum and maximum sentences. We could very well see an automobile thief, for example, receiving a minimum sentence of

two years and a maximum of five years. Everything depends on the work done with him within the institution and, if he cannot leave after two years, because not enough work was really done with him, I think that it is our duty and that of parole to get him to accept that view and, for example, not to think of release, even by end of sentence. That goes further than parole. Under the Penitentiaries Act, repeating what I said earlier, the first goal is certainly the protection of society, and the second is really the rehabilitation of the prisoner. It is often indicated, in writing, that the rehabilitation of the prisoner must be envisaged, but, in fact, we observe that it is often only a beginning, and the rehabilitation of the prisoner is not really put into practice. If we took as much care to organize, in the institutions, at the parole level, services for the rehabilitation of the prisoner as we devote to the protection of society, I believe that there would probably be a revolution within the institution.

On the subject of the Parole Act, what we are proposing is that we request that the individual, within the institution, follow a program. It is from the knowledge that we have of the prisoner within the institution, and from the development that he presents, that we will be able to release him, give him a date when he will be eligible. I think that that can secure him from the point of view of time. Well, he will say: I have so much time to do. There from the point of view of rehabilitation, I think that it is not effective because the guys can say: I have a two year sentence, I have a minimum of nine months to do, and then I am eligible. This permits him to put in, as the offenders say, to put in his time, simply, to commit himself to nothing, because he knows that, if it takes nine months, he is not committing himself, and he will perhaps not be, at a given moment, the smartest person, but he will be a person who does not want to commit himself at all, and the French expression we use for that is "that he does not want to know anything" about the program. At the end of nine months his eligibility date arrives. We are thus playing a nasty trick on him, because the date would arrive, and the people who work with him would say: listen, you are not ready to leave for your release. Thus, we gave him false hopes. I think that at that time, this is to play with him, to play with his health, with his morale.

Senator Flynn: With his nerves.

Mr. Thomas: Next, we propose another change in the Parole Act. We request that the Act be changed so that services and regional parole offices also become assistance clinics. However, what we observe is that the services are often surveillance services. After release, the prisoner is often left to himself to consult a specialist, if he feels the need at a given time. If that offender has a family problem, it often happens that for a certain type of offender, the offence is connected very, very closely with a family problem, therefore, if we send him back to his family rather than leave him within the institution, we send him back to his family, he leaves, and we return him to his family. The same situation is repeated. He needs someone, once he is outside, he needs someone who is present and who is capable of solving this problem with his family. There is something else, we perhaps spoke of it earlier, but I will deal briefly with it. There are cases where the individual has been treated within the institution for a particular psychological problem, and he can only really develop if we put him in contact with persons

outside, his parents, his employers, his friends, the work situation with which he is capable of coping. You see, we must not simply put him in an institution and wait to cure him, that does not occur. It is necessary at a given moment that he be in a position to, that he be able to accept his personal challenge, and the treatment begun in the institution will continue through the parole service. I think that, actually, we have had cases where we really wished that that gentleman be left on the outside and that we continue the psychotherapy services already started on the inside, and that this could not be done. We could not do it, after all, because there was nobody outside who could look after it. The guy who really wanted it asked us: Could you continue to see me on the outside. This is impossible in our line of work. We see him in the institution, and we cannot continue, because very often, this would be free. I think that we must organize much more the parole service as an assistance clinic, so that parole officers have the possibility of referring to persons specialized in this work, in certain fields, and who could permit him to work in a more precise manner with the freed prisoner.

Now, we are speaking about the Criminal Records Act. Regarding the Criminal Records Act, we do not have enough information on this Act, this is why we have not written too much about it.

Now, we have simply a suggestion to make. We often read in the newspapers that offenders are called all possible names. Firstly, in a Montreal newspaper, for example, there has been a theft. We do not know who committed it, but in the newspaper article, they say that it is a monstrous person, that everyone should cooperate in his arrest and that we should not permit such monsters to live in society. You see, the offender, when he knows it, is taken with his negative image of himself which is increased by the newspapers. I think that we are now driving him into it more. He also believes that society despises him, that society rejects him. Therefore what we propose is that it be possible to prohibit newspapers from making such unfavourable publicity against persons. You see, there are some acts which are improper. There are some acts which are offensive. I therefore think that we sometimes dislike a person, but no one is really repugnant if we consider the situation in its proper perspective, the perspective of rehabilitation. I believe that we force the criminal to believe that society does not want to be open to him, does not want to accept him, does not want to recognize him for what he is, and that the mass media makes him sink deeper into that negative image and that, in time, he can only feel rejected and simply no longer has the means to cope with it, and therefore is completely discouraged. Maybe I'm talking too much, I don't know.

Senator Flynn: No, no, go ahead.

Mr. Thomas: Sharing of responsibilities on the question of parole. We are recommending that the provincial parole boards be independent, that provinces administer their own parole matters, that National Parole Service and Provincial Parole Boards be separate. Very often, the parole people do not know the provincial service people very well, because the services are sharply separated, at the level of the parole services, we give the national service the responsibility for people who are in provincial prisons. Let us say that you have, I do not know how to describe it, a passing settlement and the parole people are

always bothered by the fact that they must look after people from provincial prisons, and it is necessary for the services to be truly separate.

Senator Flynn: Why are they bothered by looking after people?

Mr. Thomas: Well, very often, the people who come into provincial prisons have about three months, four months, six months, and we really cannot work with those offenders in a provincial prison as much as in a federal prison.

Thirdly, we only have a small amount of information about those offenders.

Senator Flynn: This is not the same problem. Therefore you are working towards rehabilitation, and you find that this is a very different problem at the penitentiary level?

Mr. Thomas: Because of the sentence and time, and also because of the staff available in a provincial institution, at least in Quebec, and to be truly able to have information on that prisoner. Therefore, the officer must work with an individual that he does not know well, who spent six months in an institution, and who very probably will return to crime unless it is someone who did not pay a parking ticket, or a traffic ticket.

Senator Flynn: Why do you say that he is more likely to return to crime in a provincial institution? I do not see the distinction. It appears somewhat artificial to me.

Mr. Thomas: By experience, most of the time, in the provincial prisons you usually have the 18, 19 or 20 year-olds as a general rule, because the older offender will commit more serious offences, and will be prevented only in a provincial prison, and he will be imprisoned in a federal institution.

Perhaps there is someone who wishes to reply to this question?

Mr. Belanger: I think that, according to the view that we are proposing, it appears that we wish the continuation of treatment, or a continuity of action, for the offender. This is the reason that one of the things we are suggesting is a somewhat more active integration of parole within the treatment programs in the institutions. If we see that in this manner, we wonder how, at the provincial level, we can carry out this type of continuity of treatment, precisely because of that division.

Senator Flynn: You are saying something which I accept: you are saying that the fact of dealing with someone who is sentenced to only a few months does not give enough time to study his file, and to truly forecast the conditions of parole.

Mr. Belanger: Yes.

Senator Flynn: Like we do in the case of someone who is sent to penitentiary, and I agree. But, are we not better off to have something for those people than to have nothing at all?

Mr. Belanger: Yes; we believe that parole should exist, but if there is to be an integration, it should be from A to Z. We believe that, to follow the view that we are suggesting, namely, the continuity of treatment and a training program, and the re-education of the prisoner, because re-education is entrusted to the provincial authorities, and

it is the federal authorities, let us say, who will grant parole. We are working in two different fields of activity, but which should, in the end, be a single process.

Senator Flynn: Would you see the problem from the same angle if a single jurisdiction dealt with the prisoner, whether he was sent to the common prison or to the penitentiary,—if there were a kind of integration?

Mr. Belanger: Yes, it would amount to the same thing, if there were a jurisdiction.

Senator Flynn: Does this division of federal competence today appear somewhat artificial, regarding the jurisdiction over penitentiaries and the federal competence over prisons?

Mr. Belanger: Yes, but that is insofar as the parole service is more integrated with the provincial programs, and actually, I even think that the provincial programs do not exist.

Senator Flynn: If they do not exist, we are better off having the federal system slightly look after the people who go into prison than to have nothing at all.

Senator Lapointe: How can you ensure continuity, if there is nothing on the provincial side; there cannot be continuity if there is nothing?

Mr. Cyr: I would like here to take as an example what is done in New Brunswick, where they have temporary leaves of absence at the provincial level, to permit the prisoners of the common prison, or its equivalent, to work outside.

I would like to add that I think that that program, as far as I could observe, is working well enough, and with an apparent success percentage of 97 per cent, during the time that these people are under surveillance, during a temporary absence, before the end of their sentence. After the sentence, no study has been made, but before the end of the sentence, it is 97 per cent. Evidently, the type of prisoner is different, also, because you have prisoners sentenced for much less serious offences than those that are generally found in federal institutions. Therefore, that requires a somewhat different approach at different levels. If at that time we integrate the common prisons with the federal prisons, evidently, we will always have to take account of the two kinds of sentence.

Senator Lapointe: Are these temporary absences granted by the provincial authorities?

Mr. Cyr: Yes.

Senator Flynn: For example, at Îles-de-la-Madeleine, this was on the sole initiative of the warden; therefore, it is easy enough to control the prisoners.

The Acting Chairman: Have you finished?

Mr. Thomas: Another matter, on the subject of responsibility, is that we hope that, in the case of murder, barring exceptions, which I will indicate—it is no longer the Governor-in-Council who will approve a request for parole—except in those cases where the murder in question is connected with a political reason. I think that it is up to the federal government, in this case, to foresee and to judge. I take the case of a certain murder of the FLQ, during the October crisis. I do not think that it is up to a

mixed committee of institutions, and for example, of parole, to decide the parole of these individuals. It is their responsibility to recommend, but I believe it is up to the Governor-in-Council to decide in those cases. But, in other cases, where murders are not connected with political reasons, I think that the Governor-in-Council—they have little information, after all, and it is only with the information given by the people who work closely with the prisoner that they can say yes or no whether they would agree with the proposal for parole. This is why we hope that the Governor-in-Council will no longer grant permission, if you like, or will no longer ratify the cases of parole for murderers, except in the cases which would be connected with political reasons.

Senator Flynn: You are nevertheless raising the problem of the partial abolition of the death penalty, or perhaps the total abolition, decided by Parliament,—there were objections raised, and life imprisonment no longer means anything because, by a decision of either the Governor-in-Council or the parole system, the prisoner, who might have been found guilty of the most foul murder,—and there I describe it like you, like murder and not the person—can obtain his release after 10 or 15 years of detention, when the legislator really wanted life imprisonment; it is in those cases, and in these conditions—that we accepted the abolition of the death penalty.

Mr. Thomas: Yes, you see, the case of murderers is, in my view,—I don't know if anyone else has something to say,—but these are complex cases for me. These are not simple cases. I think that, from the social point of view, murder is a very serious act; it is a very serious attempt against the person to destroy him. That is very important.

Senator Flynn: It is final.

Mr. Thomas: Now, it happens that there are several kinds of murderers. You see, there are murders which are foul, as you say. I think that we often see in these cases, also that the individual, the murderer in question, has a life style which is what we could call, moreover, somewhat dishonest and delinquent throughout.

The jealous murderer is ordinarily an honest citizen, caught in an emotional situation with his wife, and it is often a story of a triangle with his wife, where the wife wants to leave him, etc. He therefore enters into a crisis. He will commit his murder and it is perhaps the only time in his life that he will do it. It is in this case that he will really need treatment, if we sentence him to life. The law only intends to teach the population that murder is serious, that the penalty received is very serious, but from the point of view of treatment, it is very different. It is very different, and in this case, the life sentence no longer has meaning.

Senator Flynn: It is for this reason that, previously, we had the distinction between capital murder and the other,—during the first evolution that was made, the first modification of the Criminal Code.

Mr. Belanger: On that point, in practice, the death penalty has been practically abolished in fact.

Senator Flynn: It is abolished in fact.

Mr. Belanger: The fact of having made that thing official, without even penalizing the people who have been con-

demned to death, because before that time, one became eligible for parole at the end of seven years whereas now, they become eligible at the end of 10 years imprisonment. This means that, for a jealous murder, they will now have to serve three more years of their sentence. Finally, that is meaningless, from the point of view of treatment.

Senator Flynn: The distinction is very sound and very important.

Mr. Thomas: I will try to go faster.

We hope that, in the organization of the parole service, the decisions which are in the field of the treatment institutions will be taken by a mixed committee composed of members of institutions who have worked with the prisoners, and parole officers who have been present in the institutions. We hope that the parole officers, some of them,—not all the officers, but some of them,—will be integrated into the institutions and that their work will consist in the program, of preparing everything dealing with the departure, outside of the offender. Presently, there are two separate services, the officers come to us to have their interviews, return to their offices, and very often it is based on the report of Mr. X or Mr. Y; they gather all that and take the decision. The parole commissioner, who arrives later, gathers all this information, he does not really know what happened in the institutions, because, you see, a person can gain knowledge from reports; a person can also gain knowledge from the facts, but I think that, when it is a matter of predicting and of risking the setting free of an offender, that assumes that more is necessary than reading the report, it is necessary to have a better knowledge of someone than to read through what is written about him. It is for this reason that we propose that, if we want to be much more effective, much more logical, you see that goes in two directions. You see, someone can be released earlier, but someone could continue his time in prison, whereas previously, if we keep the two services for a work which is not really prepared jointly, the result is that the prisoners, who should have been released, are imprisoned longer, and those who should be imprisoned longer are freed. Therefore, it is in order to try to mitigate this objection that we often grant parole. You see, they write in the newspapers that another parolee has just committed another offence.

But, where we have information,—what value does this information have? It is often because there is too much distance between the daily life of a prisoner and the person who will decide in the final instance,—that is, the commissioners.

We would like, we would hope, in that view, for the commissioners to become consultants at the same time, if you wish, national supervisors of the parole services organization in the different regions, and also to constitute, if you wish, a court of appeal,—a court of appeal for the prisoners who believe that they were not justly treated by being refused their parole. At that time, the commissioner can comeback and say: listen, it will be necessary to study that case, and become the devil's advocate, to be able to win his case and render a more enlightened decision. It is thus that we see the new role of the commissioner, not a person who, in a given region, must hold hearings; they are overburdened, most of the time, and know the prisoners only through the reports and the words of people who work in the institutions with the offender.

We have spoken of the assistance clinics.

Now, what should the parole service obviously be: it is really for the release of prisoners and the protection of society, both at the same time. We have already spoken of it, and in order to accomplish this, it is necessary for the work to begin in the institutions.

Now, admission to parole. We might ask that, if the commissioner no longer plays the role of holding hearings and meeting the prisoner, then the hearings held by the commissioner with the officer can be eliminated. You see, the commissioner actually meets the offender, and if we give a new role to the commissioner, and the role of the decision really is left to a mixed committee of parole institutions, I think that there is no longer any reason for hearings at that time.

In addition, we also propose a greater use—and this answers the question that you raised earlier, sir, regarding cases of murder, capital punishment and life sentence,—of the law regarding exceptional cases. In the cases of life sentences, we have not advocated it in our report, but this is what we want, that it can depend on the type of murderer we have. We can wait ten years, and I think we can wait 20 years in certain cases; in other cases, we can perhaps wait only three years. At that time, the jealous murderer who ends up doing ten years will therefore have seven years left to serve within the institution but which are at the discretion of the committee which will probably be able to make a recommendation to the commissioners at that time.

For example, we believe that this person would be ready to be returned to society, and that, if necessary at this time, we will make an exception for him. But perhaps the idea remains in the law that the crime committed is serious, but we leave it up to the discretion of the mixed institutional committee, with the parole services, to decide whether, in certain cases of murder, it would be good for the gentleman to be released before the ten year period.

We also believe another thing. I think that it happens in certain cases when someone's parole certificate is suspended or revoked; it is often because the parole officer at that time perhaps believes that the parolee is in a critical situation on the outside, and that perhaps he will begin to steal again, or commit an offence, but he really cannot really predict it. In certain cases, for example, there will not be an offence, but in the cases where tension exists, either a conjugal tension, a very strong family tension, where there are offenders who say to us: sir, I am on parole, and if I feel at any time that everything is not all right, then I can't take it any more, I will come and ask you: lock me up somewhere, I don't want to do anything, I don't want to hurt anyone,—you see, this would often be a method of avoiding unfortunate happenings. Because of that, we propose that there should actually be within institutions what is called pre-release institutions. In Quebec, we have the St. Hubert House, where the gentleman, before leaving on parole, can spend two or three months. He has the opportunity to work on the outside, to come back to sleep at night. That is found in the centre of the city, it is very well located. I think that we should not only, in what is called semi-open houses, permit prisoners to prepare for their coming release, but more than that, it is because there are prisoners who are on parole in difficult critical situations who can, without losing their jobs, be brought back to those houses. From previous experi-

ence, I feel that, most of the time, not in all cases, they might wish at any given time, to be granted a reprieve of some kind with reference to a given difficult situation—perhaps one month or one and a half months, without losing their job, without being returned to institutions thereby incurring a loss of points related to accumulated good behaviour—good behaviour time allotted them on the basis of their proper conduct—which they presently forfeit upon reincarceration. Such provisions might prevent a relapse into crime—ridiculous relapses—such as punching someone. Here, a parolee might be involved with his own family members—even his wife; happenings occur, and during a critical moment he is liable to do something regrettable. Should provisions be made to remove him from the source of conflict and to provide opportunities for discussion during a reasonably long period during which he might be told: Listen, you will not return to your family except without being granted leave, at given times, during one or two months. And then, he might be told: agreed. You may leave since the crisis is over. I feel that this would be far more practical than the method presently employed, that is, plain reincarceration in maximum security institutions. He is simply returned there.

Daytime parole as provided by the Parole Act and temporary leave of absence by virtue of the Penitentiaries and Reformatories Act: in conformance to the basic thought of our report, I feel that should the parole service and penal institutions be integrated into the rehabilitation process, there would be no need to separate the services, that is, there would then be no necessity for stipulating who will make the decision regarding daytime parole, or who will make the decisions related to temporary leaves of absence—given a mixed committee—there would then be no problem—decisions would be jointly made, involving the institution and parole representatives.

Compulsory surveillance: the question arising here involves the manner in which compulsory surveillance will influence the standard parole procedures and other parole programmes.

It is felt that compulsory surveillance may have a negative influence, that is, under standard parole procedures—in difficult cases, unclear ones—oftentimes one might preferably make use of compulsory surveillance where the detainee is not freed until he has almost completely served his time, that is the time allotted him in the institution, and the time remaining to complete his sentence will be under compulsory surveillance. Hence, what occurs is that he will be obliged,—the decision we are to make will be: it is best to subject him to compulsory surveillance, since in that case, the competent authorities shall have lesser responsibility than were he freed on parole. Hence, this is our only objection. I admit that it is not very important, but it is nevertheless part of the picture.

Presently, as per its classic definition, compulsory surveillance nevertheless appears to us as a desirable procedure. A desirable procedure since it does not leave the freed prisoner, during his unexpired sentence, without recourse or without support of any kind; at all events, he may have recourse to a parole officer. Contrariwise, during previous unexpired sentences, when compulsory surveillance had not been provided, this resulted in that he was literally thrown out in the street. He left with \$50.00, oftentimes with broken family ties—he could no

longer depend upon his family. Under these circumstances, a relapse is always imminent. He must provide himself with clothes. He must find an apartment. He must eat. He must seek work. Do you feel that he can thrive for long under such circumstances, without, at a given time, once more reconsidering the good old approach consisting simply of dishonestly appropriating money for himself.

Does compulsory surveillance render the reduction of a sentence—obsolete? In some way, no, it does not render a sentence reduction obsolete. In view of the fact that the prisoner accumulates good behaviour time, that he is allotted three days per month for good behaviour, such compulsory surveillance may prove to be just the right stimulant for him—however, having been granted what we have just proposed, the fellow will be freed whenever he is ready—hence, this presently requires a different approach whereby a prisoner does not merely waste his time creating problems within the institution. You see, the notorious Geoffroy case,—he was a fellow who had displayed good behaviour within the institution, but who, in the end, slipped away. It is not necessarily the sole rehabilitation criterion—that a prisoner abide by rules and regulations—that he respect authority—that he is quite sociable; since, you see, certain delinquents take advantage of these provisions, and once freed, they simply relapse into crime. Hence, it is our wish that the sentence reduction—in the final analysis, allotting them one-fourth of the sentence, allotting them three days per month—from our viewpoint, this now appears obsolete, that is, the prisoner's effort toward improvement should be the true yardstick for resolving his case.

With reference to special categories of delinquents, for example, we refer particularly to murderers, armed robberies, and particularly sexual delinquents. I feel that in the legal scheme, should it be practical to say that he is a sexual offender, I feel that, on a factual basis, from the treatment viewpoint, it does not change anything, it particularly being that research being carried out with reference to sexual delinquents generally result in putting everybody in the same boat. Conclusions are arrived at concerning many things that seldom correspond to predictions made—that the sexual offender is the one who relapses very quickly—since he has been so branded. I feel that this is false. It is untrue. So that at a given time, a delinquent is penalized because we have pinned a label upon his back, and that, people who are generally remote from the prisoners will view this as, hum! He's a type of delinquent—it is said that such offenders are dangerous. It depends upon the individual. No two are alike.

Furthermore, any desire on our part to do research depends upon statistical data. Should 35 out of 50 be judged as dangerous, there nevertheless remains 15 that are not. That's the crucial point—this labelling hazard. They may nevertheless be included among research subjects, but I feel that, from the treatment view point, and also from the previous viewpoint, that it is possible to parole them—I mean, they cannot be freed since, right away, they are sexual offenders. Well, it's unfair. The crucial issue consists of knowing just who the individual offender is who is about to be freed. That's what counts.

There yet remains,—we had not sent question number 11 and question number 13 with the original report, and this we have with us this morning. These points treat upon the organization of personnel affected to the parole board.

You see, the problem is that if we are to make a truly valid assessment, that is, to have pertinent information regarding someone, either from the offender who tends to lie or to manipulate us, we have to verify a few things; one may not rely upon the good faith of an offender, least we run the risk at a given time, of being imparted information of doubtful validity.

Hence, the parole officer is frequently taken up with a group of offenders whom he must see, sometimes carries out,—I don't know,—one interview, two interviews, he tries to see the fellow, he tries to examine his past, he tries to look into the prisoner's future plans upon his release, and then, at a given time, he introduces the case to the commissioners. What occurs is that the commissioners are stuck with a strange problem consisting of taking enormous risks at given times. This gives rise to the same problem as formerly existed, that is, at given times, it results in the awarding of certain arbitrary decisions. The commissioner shows up, and, on the faith of available information, he will say: well, I cannot really see how that one may be released. I am not too clear about it. I feel that releasing him would involve too great a risk. Is it the delinquent's fault? I feel that one cannot answer this question. One may say, at least, that one knows that the information at hand is not sufficiently elaborate nor checked out. One may at least say that. I feel that on that score, the number of personnel ought to be increased in order to enable it to arrive at a worthwhile assessment.

Secondly, there is also the predominant problem termed: surveillance. Should the parole officer be truly involved in surveillance, not from the viewpoint of meeting the prisoner for an hour once a month, so as to ask him, if things are all right—but rather—to work with him, particularly during the first six months, during the three to six month period following his release. Those are the most critical moments regarding tendency to relapse. A relapse may be prevented. It may perhaps be delayed should we, at a given time, be truly enabled to look after the offender at the time of his release—such that—more parole officers are required for that. This is obvious to us, in any case, and it seems to us that we are performing with a minimum number of personnel. The problem is serious regarding parole. I feel that, in terms of social liability, for one to make a decision from a totality of information that appears to us, you see, that seems to be but positively accentuated—the prisoner behaves well, and so on—but, just what is the true nature of the facts? Well, we do not know since we have not had time to investigate.

I feel that the question of social responsibility arises—that which brings us once more to what I mentioned earlier—to slips—that is, fellows that are released who should never have been, while others whom we feel ought to remain within institutions, but who, in the end, are released.

In short, we suggest an alternate approach. We propose that psychologists become an integral part of the parole service. You will say that we are arguing our own case. Possibly. But, let me tell you why. Very often, parole officers send us letters at the institution. On the average, we are approximately two psychologists for every 400 prisoners. We lack the time to follow all those people. It's physically impossible. We are told that frequently, psychologists are there for problem cases. Within an institu-

tion, certain cases have never been problem cases. The parole officer, upon examining the offender's evaluation, the commissioner, upon reading the evaluation, wonders: it seems to me that a psychological report might be necessary—things are unclear in this matter. At a given time, it sometimes occurs—certain institutions having an information request file—and they are two only who handle all the problems of the institution. Psychologists are frequently reticent to render such evaluations due to lack of time. One has the choice of making a true evaluation—involving a minimum of two or three work days—should one really wish to discuss and to understand, to probe in the least, and sometimes to drive our man into a corner, since it is then necessary in order to shed light, since, then, other daily tasks within the institution become neglected, and we are not prepared to do that. We have a choice between leaving aside daily chores, that are quite substantial—so as to forward a very important report—or in the opposite—to expedite the request application after having seen the offender but once, and thus forwarding a report that, in the end, proves of no value to the commissioner. Such a course of action serves no purpose whatsoever, and we are forever subjected to the same story. Hitherto, we have not been able to agree in order to elucidate the problem. It has not been possible.

Secondly, during parole surveillance, wherever the offender is on parole, what happens? As I mentioned earlier, at a given time there arises family crises, marital crises. The boys discover some solutions on their own; should an offender,—he has been married for one, two, or three years, and things do not go well with his wife; he returns to his wife after a given length of time, and the same situation recurs. Hence, this results in a resurgence of tension, and it is clear that what emerges from his history—is that all along, he really wanted to get away from home. This may seem odd, but in some respects, that's what delinquents are. They discover such typical solutions, and in order to remove themselves from marital tension, family tension—they commit breaches of the law. Such breaches oftentimes prove to be a very hostile form of protest. They then become incarcerated within institutions. So long as they are inside the institution, things go well. Such cases must be handled at the very moment of crisis; furthermore, I believe that specialists are required to work with such offenders upon their release. This is the daily routine that he must envisage—he must learn to control himself, and to adapt to this situation. Such daily routine, however, is not as yet part of the institution. Hence, this explains why institutions will require more highly specialized people in the realm of social relations, in order to find solutions to conflicts—whether this consists of total solutions, or partial only—in such a way that our fellow, the former prisoner, will at least meet with a solution. His requirements consist of solutions that are more acceptable from a social viewpoint. Should he experience poor relationships with his wife, then he ought to consider other solutions, such as separation or divorce—but not to try to escape the problem by committing robbery, nor by giving vent to an emotional crisis. These boys tell us: I felt depressed, things had soured with my wife. Such is not always the case—quite true—but certain cases prove to be so. To liberate an offender without providing him with this special help, means to run the risk that the same situation might recur—should no final solution have been made available.

Furthermore: society's reaction to parole. Here, a different approach might be attempted. I feel that the average person in society is relatively ignorant as to what occurs regarding parole. Newspapers propagandize foolishness regarding parole releases—some of which are quite shocking and do no justice to neither the National Parole Board, nor to the offender himself—but tend rather to darken the picture. This occurs particularly among smaller newspapers, and I know that in Montreal we have a few that are printed weekly. At a given time, for no apparent reason, invariably is always an article appearing whenever a former inmate has been paroled—he may be a serious offender—who for reasons I ignore—has been released, and so on, with no apparent reasons. Should the parolee have relapsed into crime, I agree that it ought to be made known publicly. However, there are times when he has done nothing, and by such reporting tactics as: "It is said that", "we have heard of him"—such things are printed in newspapers. However, the "*Montreal Star*" daily has published factual and well-edited articles concerning the parole activities in institutions, and I feel that this should be kept up—but it seldom materializes.

It seems to us that the public, nevertheless, ought to be aware of what occurs, what is being done at the institution level, regarding parole; it ought to know. The public is ignorant of what takes place, and oftentimes it is being subjected to lies stained of sentimentalism.

One solution might be to say: listen, let's openly expose these goings-on. This does not appear to be a prudent course. However, in my estimation, a prudent course would be—by means of serious newspapers and such communications media as television—regular contacts occur, changes take place, and situations, or, I feel—should we have the courage to say: take note; this is the situation that we have to contend with. Oftentimes, I think the public might more easily understand why, at given times, we make certain requests—that errors are being made. I say this with prudence, since, as you know, they may easily get carried away and become reprehensible, refusing to understand.

I feel that should we inform the newspapers,—there have been interesting television programs related to parole releases. One in particular was broadcast during the month of February and which was re-run on the day before yesterday; it was very interesting. In that case, a general approach was used, but there nevertheless exists many specific problems regarding parolees; these may involve officers, services, . . . that might duly be made publicly known. There is also the possibility that citizens, . . .

The Acting Chairman: Are you just about finished?

Mr. Thomas: There is also visiting volunteers. May we note that visiting volunteers are quite important, and that, frequently, they have stronger ties with the released offenders than does the parole officer. Furthermore, they may help him, and more easily anticipate a given critical moment.

I have perhaps spoken too long.

The Acting Chairman: Thank you very much, Mr. Thomas.

Senator Laird: First, I wish to thank you most sincerely, you and your colleagues, for your interesting report. Let

me say that I am not in complete agreement, however, my command of our country's other language is so limited, that I prefer to ask my questions in English.

[English]

The role that you would envisage for the Parole Board is one that would certainly reduce their importance greatly. Have you any statistics showing how many times you have recommended release and the Parole Board has refused to follow your recommendation?

[Translation]

Mr. Thomas: No, we have no statistics on that matter.

Now, I realize that each and every one of us have such cases. There are certain memorable cases, where, for instance, we had been counseling a certain prisoner—and there were five of us—and the Board refused, even after talks concerning his release. Others have occurred at given times.

[English]

Senator Laird: I see also that you propose the integration of temporary absence and parole, and, as I read in your brief, the whole thing would be left to the Penitentiary Service. What is wrong with doing it the other way, and leaving it all to the Parole Board?

[Translation]

Mr. Thomas: Temporary leaves are presently granted by the institutions. Should parole releases be integrated as part of the responsibilities of the institution—in such a way as to assemble a mixed committee comprising institutional officers and parole officers—there will be no further need to separate these two services regarding the formulation of decisions. The people are there, a joint decision is arrived at, and the recommendation is made. The recommendation is made by people, and parole employees make a joint recommendation along with institutional employees.

Mr. Belanger: As a reply to your first question: the whole idea for this is not to finally reduce the role of parole officers—but rather to increase their involvement as part of a combined-services team, in order to participate at what might be called the decision-making process. For example, this occurs in hospitals whenever patients are being observed by a medical team that comprises medical, as well as paramedical services. Case-studies are made, and after combined-services discussions, and a complete rundown of the previously arrived at decision, a solution is finally adopted. What one finds difficult to accept, for the time being, is that the parole officer presently takes no part in the decision-making process. He merely assembles the various reports, as one would a jig-saw puzzle—without having personally participated in the acquaintance-ship of the offender—involving the entire human process of making a decision affecting another person. Hence, it is our desire to give him a more important role.

Senator Lapointe: Prior to requesting that such powers be vested upon provincial authorities, if it is your wish—that decision-making powers related to parole releases be vested upon provincial institutions—there will arise, as

the gentleman just pointed out, a need for considerably increasing the number of personnel?

Mr. Belanger: I'm sorry. I was then referring to Federal institutions; I was talking about Federal institutions.

Senator Lapointe: In Quebec?

Mr. Belanger: Within Federal institutions in Quebec. In that sense, we refer to our Federal institutions, while not making direct allusion to Provincial prisons. If we are to confine our discussion to Federal institutions, we should be particularly favorable to idea of integrating certain officers within the decision-making process—from that viewpoint. That's our suggestion.

Senator Flynn: Does this mean, from a practical viewpoint, that the decision will be made within the institution?

Mr. Belanger: Listen, that's not important.

Senator Flynn: It's very important. In practice, the decision will be made within each institution.

Mr. Belanger: No. There may still be a local or regional parole office, however, there ought to be agents—within each institution's programmes—that are proportionately more active.

Senator Flynn: If, in practice, your aims are to return the decision-making process to the institution, let me then bring up the question: How can you establish similar standards in all institutions throughout the country?

Mr. Bourgeois: This question, in fact—I feel that we simply wish to work as a team.

Senator Flynn: I have no objection to that, but you're going much further. You really want the decision factor to be the institution.

Mr. Bourgeois: It's the team.

Senator Flynn: The team, if you wish; whether you have a small or strong team, your principle lies there—at the institution level. Hence, let me ask you: how are you going to standardize the policies in all the institutions?

Mr. Belanger: I think that the local or regional office would retain its importance. That is why, we feel that one of the commissioner's roles, for example, might consist specifically of establishing said standard on the national level. Which means that at a given time, what you have just mentioned might be very important—that is, within an institution, one may become biased due to certain problems, or due to certain violations, or to certain other things.

Senator Flynn: Due to one's personality, or other people's personalities.

Mr. Belanger: Due to these roles, certain things might be important—to be offered to those commissioners; and that

might be an attempt at correcting provincial or regional situations that might arise.

Senator Flynn: Do you think that might be possible—this granting such influence, such decision-making powers to institutions?

Mr. Belanger: I beg your pardon. I feel that the idea is not to grant it to institutions. But rather, it is the granting of it to a combined-services team made up of institutional people and of parole people—who might nevertheless retain their present locals, but who might have greater access to our institutions, and who might participate more fully as regards institutional activities—for a few officers, at least.

Mr. Cyr: To answer this, let's say that what presently goes on is that there exists a lag between the treatment-programme that we are proposing for the institution, and the role that one allows for parole. Presently, the manner in which parole releases are introduced—these are confined to their treatment role, as a consequence of not being afforded sufficient contact—closely supervised by institutions—for such similar treatments. Hence, should our perspective encompass the fact that Federal institutions are those where inmates undergo treatment, this requires that upon their release, they shall be enabled to become integrated within society; and, from that moment, this will also require integration with parole officers so as to familiarize them with the problems encountered by a given type of individual—thus adapting a special approach in order to help him upon his release.

Senator Lapointe: You said that you wish Provincial authorities to have their own parole system. Hence, does this exclude the Parole Board?

Mr. Cyr: Either one, or the other—in the final analysis. What we suggested a moment ago was that this is how things are at the present time—it's that they are presently being looked after by parole service employees. Therefore, what happens is that we have two types of inmates, two types of problems, finally, and this becomes an excessive burden, of work to do, and also, in assessing the sentence duration period, which varies between 3 to 6 months, for example, this becomes a much more difficult task for the parole officer who assumes such duty.

What we propose in this report, is that he be well-prepared: let the provincial authorities look after parolees, as it is being done elsewhere, such as in New Brunswick, for example—this, in order that the programme be specifically adaptable for inmates, to parolees, by considering their offenses—the majority of which are minor ones—or a first offense. I feel that under such circumstances, should there be a fully integrated programme—within this scope—there will arise improved chances of avoiding relapses, than if we were compelled to look after each such cases in our spare time.

Senator Lapointe: Then, at the Provincial level, you wish to see Provincial authorities assume the responsibility for making decisions related to parole—in lieu of Federal authorities? You want this to be a mixed group, is that it?

Mr. Cyr: That they be integrated.

Senator Lapointe: You want this to be carried out with Federal Parole Officers?

Mr. Cyr: That's it.

Senator Lapointe: No longer by people from within the penitentiary?

Mr. Thomas: Well, evidently, still under the jurisdiction of the commissioners—that's quite important. Evidently, it seems that in our proposals we made little allusion to that—however, it's quite important, since I feel it will frequently occur that should it become in force, especially at the outset, one may ideally anticipate for example, that what will happen will be that the inmate will appeal frequently, and that he will say: I do not agree with you. I say that, despite everything, the commissioners all across the country will have much work to do. The commissioners shall then see to it that another report be requested regarding more involved cases—having on hand a first report—and they shall then say: listen, what's going on, what's wrong, etc.?

Senator Flynn: Are you not rather saying this: that the commission does not presently have on hand, due to its present mode of operation, all the required information, and that this information is not made available to it quickly enough? Isn't this what you wish to say?

Mr. Thomas: That's one of the big basic problems; that's it. Not only does it not have the information, but further, it lacks in information quality.

Senator Flynn: Yes, well, this gives rise to the necessity for having a greater number of personnel at the institution level, so as to enable it to report to Commission members—and the latter continuing to make decisions?

Mr. Thomas: It's more than that. Let me explain: should the Parole Officer be more fully integrated within the institution, whenever the fellow is released, the officer may continue the work, but under an altogether different mode—he then faces the real aspects of a problem.

Senator Flynn: I have no objection; I find that important—an accessory to the general principle; but I was given the impression that you wanted to give a kind of autonomy to institutions. However, if we are to go deeper into this, you seem to want, rather, that within the institution there be an increased number of personnel looking after parole preparations, and, once the parole release decision has been made, the individual is to be closely supervised by said personnel.

Mr. Thomas: Practically speaking, I feel that you have the substance of our thinking.

Senator Flynn: In other words, you are saying that there is an insufficient number of systems, not enough techniques in practice?

Mr. Thomas: That's it.

Mr. Cyr: We're placing more emphasis upon the participation of leaders on the inside.

Senator Lapointe: For example, you say that there are only two psychologists for every 400 prisoners. From a logical standpoint, how many would you require? Should there be ten? Should there be 20? I'm in no position to know; it's up to you to answer.

[English]

The Acting Chairman: What is considered the normal work load of psychologists?

[Translation]

Senator Lapointe: Just what does your work consist of?

Mr. Belanger: What goes on in institutions regarding psychologists, in fact—they do different things: they have roles affected to inmates, for example—individual therapy, personal intervention. They behave as consultants toward social workers and criminologists working there; they behave as consultants in reference to institutional framework—helping out prison Directors and their assistants, etc. They also help in the education and training of the personnel—when time or opportunities allow for this. There is also group therapy; they meet with trade instructors, etc. They also must satisfy the demands of the inmates themselves—those who require the services of psychologists; they must reply to questionnaires submitted by doctors of general medicine, or others sent to psychologists by doctors of psychiatry, requiring their attention. They must satisfy parole requirements, making assessments, and, nearly each one of these evaluations—should the individual be little known from the psychology viewpoint, this certainly requires an in-depth study and evaluation necessitating two or three work days, if we are to present something worthwhile in terms of assessment. Which means that ours is a multiple role; hence, it would be quite difficult to say how many would be required for that, since consultation involves greater or lesser time: you may allow little or much time for consultation down through the ranks, little or much time at the officer level, at the social worker level, for criminologists, and so on. Hence, it's quite hard to answer such a question.

Senator Lapointe: Is there no existing standard regarding the ratio of psychologists to the number of inmates, for example, five per 400, or ten per 400, or other?

Mr. Belanger: A certain criterion has already been established in the U.S.—in this respect.

Mr. Cyr: One may illustrate by example: in a psychiatric hospital, you may have one psychologist for every five inmates, or one psychogist per every 20 inmates, in a psychiatric hospital—but this evidently depends upon existing programmes.

Senator Flynn: But these are not prisoners?

Mr. Cyr: No, no, but these are nevertheless people who benefit from psychological services. It's precisely from that viewpoint that I can answer, since other criteria may equally come into play.

Mr. Belanger: That's where one can perceive at the clinical level, I believe, that even where one has a highly developed programme, or even the world's best programme, each of the inmates is in prison for a very specific reason, for his own unique requirements, applicable to him alone, and I feel that in order to satisfy such requirement, as well as to his personal deficiencies, having contributed to his present incarceration—he requires that his problem be closely supervised by other persons, so that we will be enabled to satisfy his own personal requirements—which necessitates individual

attention, and not simply the intervention of an impersonal programme—which gives rise to a need for all kinds of specialized persons, whether they be psychologists or social workers—but persons capable of using an interpersonal approach—capable of profoundly grasping the problems of inmates—since presently, social workers found in our institutions are overburdened by myriads of things.

Let's take as an example: inmates have just been granted their release on a basis of Code 26. At the present time, social workers are overwhelmed by inmates requests for leaving "as per Code 26"—weekend leaves. Therefore, should we have three social workers for every 400 inmates in our institution, and should we, each weekend, receive 50 requests for weekend leaves, this means that the social worker must meet with the requesting inmates, to evaluate the scope of his request, to make contacts with his family in order to assess the importance of such leave, to write up a report so as to introduce the case to an inmate training committee, that takes place each week, so that that particular case be studied by a combined-services committee—thereby resulting in the adopting of a decision regarding the weekend leave. Therefore, that particular weekend leave gives rise to a great expenditure of energy, of effort, and unlimited time, which supposes that all that time is taken away from cases requiring individual attention or for therapy, and for an in-depth search regarding a given individual's life. So that these new programmes have not allotted us new personnel within our institutions, are very time-consuming, and prevent us from doing thorough work in other ways.

Senator Lapointe: Then, you would have a greater number of social workers? Would you rather have a greater number of social workers than of sociologists?

Mr. Belanger: Of both.

Senator Lapointe: It's because you seem to say that social workers have become overwhelmed due to this new formula?

Mr. Belanger: Yes.

Senator Lapointe: But it seems that sociologists are not overly affected by such new regulation?

Mr. Belanger: He is less affected by that—It's evident. Constant attempts are being made to influence the psychologist, so that he will have a direct say in this matter. But we do not wish to become so involved.

[English]

The Acting Chairman: Mr. Belanger, you are a qualified psychologist. Cannot you tell the committee what, in your opinion, would be the normal workload for the conditions you have outlined?

Mr. Belanger: It is one for 75 in the United States.

The Acting Chairman: And would you agree that that figure would also apply to the Canadian correctional institutions?

Mr. Belanger: I would say it would be quite an improvement if we had that type of ratio.

Mr. Cyr: It would be quite an improvement.

[Translation]

Senator Goldenberg: Do you mean a psychologist, or a social worker,—one psychologist for 75?

Mr. Belanger: One psychologist for 75,—since it's quite different.

[English]

The Acting Chairman: Excuse me, I am getting the translation as "social worker"—are you referring to a classification officer?

Mr. Belanger: Yes.

[Translation]

Senator Lapointe: Did the gentleman wish to say something?

Mr. Albert: Yes. I work in Cowansville, where living units, or community units are soon to be installed; and in our 500-inmate institution, there are presently eight of us having the responsibility of classification officers—giving rise to a case load of 50 per classification officer, while psychologists remain at one per 200.

Senator Lapointe: Is there a lack of balance between the two?

Mr. Albert: Yes. That's it: with more officials on the payroll, more contacts will be made with inmates, and the more numerous the contacts, the greater will be the manifestation of the problems as these will be brought to light; and, oftentimes, those individuals are referred to psychologists, and there are requests.

Senator Lapointe: Therefore, the psychologist is unable to fulfill all your requirements, all your requests—because there are too few of them?

Mr. Albert: That's it; the psychologist plays another role, also:—the role of consultant, and that is why, a while ago, one could say that the psychologist has his foot in everything—which goes so far as personnel training—and, under such circumstances, of what consists his therapeutic role? That is why the American Psychological Association suggests one for 75. But, frankly, we did not come here for things of that nature—let's say that these are the facts.

Senator Lapointe: Once an image is released, is it a social worker that looks after him—the psychologist's role has ended?

Mr. Albert: Madam, that is why we said so in our report—that we can well visualize the role of the psychologist or psychologists, within the framework of parole, that is, within surveillance agencies of the Parole Board. Such psychologists might pursue treatment at the psychological level—where such work has already been started within institutions—since, once the fellow has been released, we don't see him any more; we are within our walls, and what can we do. We are not in the same position as my colleague, Marcel Thomas, we are unable to work evenings with him. We sometimes do it, but on a voluntary basis.

Mr. Bourgeois: However, to pursue the matter further regarding the integration of certain parole officers, we

bring up the question about the continuity of treatments to be administered; the walled-in psychologists work with certain inmates, and they have acquired thorough familiarity regarding their problems, and they have already established an excellent relationship with those inmates, and these psychologists should normally be permitted to continue their work once the inmate leaves the institution—since that work has been initiated, but it is not pursued further. The inmate has undergone an in-depth study, but he blocks up at once, all at once, and treatment must be renewed from scratch with other persons—when that is possible. This consists of what might be called a slicing of the treatment—that which presently occurs in psychiatric hospitals—precisely—these are in effect, outpatient clinics. Once the individual has left the hospital, he is permitted to see that same doctor in the outpatient clinic—who is thus permitted to continue has treatment task. Presently, this is absolutely impossible. Much as we may start a given type of psychotherapy, or a given type of treatment affecting an inmate, he will leave, and we are incapable of sustaining him on the outside with that same type of treatment—in order to help him adapt to reality.

Senator Flynn: Why, because there are too few of you, or ...?

Mr. Bourgeois: Primarily because these are two entirely distinct organizations. We do not work outside institutions. Our duty consists of working inside the institution from nine to five, then, that's it.

Senator Lapointe: Should the parolee have to visit you at the institution, or will you go to see him?

Mr. Bourgeois: It may be incumbent upon the parole officer. That is why we suggest a measure of flexibility, of agreement between those two organizations—something that would look as a single programme, rather than different programmes subjected to by the inmate—and that would carry him through different stages by nearly the same persons having to deal with the inmate—from the outset of his incarceration until the end of his parole.

Senator Lapointe: Yes, but that's quite difficult—let's say that in Cowansville, where specialists, psychologists, and social workers are found—well, should the parolee head for Montreal, he is unable to return to Cowansville so as to be guided by those inside the institution, who know him quite well—then, how do you solve this problem?

Mr. Bourgeois: Well, Madam, from the psychological viewpoint, I personally feel that should the Parole Board have psychologists among their ranks—it's easy to transmit to them the information, to attune them to that guy's problems: what we have done, what we have not done, to what we should have done; and that person being qualified, might continue—since it's impossible to do—there is only 50 to 60 miles between Cowansville and Montreal, anyhow.

Senator Flynn: On the whole, you seem to be treating the problem of the inmate, or of the institution, as that of a large hospital where all services are to be improved or integrated, etc.; however, from that moment, am I to understand that you are considering the inmate's release as the first step on the road to rehabilitation—is that not the case?

Mr. Bourgeois: I beg your pardon?

Mr. Thomas: As the last one.

Mr. Bourgeois: The last step—the one made subsequently.

Senator Flynn: To rehabilitate him from within, but—doing what? I understand that you analyze his case, but him, he may be insensible regarding the fact that he is being looked after in this way—during the time of his detention.

Mr. Cyr: Evidently, within a given system, whenever we discuss the treatment tasks regarding an individual prior to his being released on parole, and that we actually carry out such treatment, well, evidently, this includes a good many things: it includes apprenticeship programs, social responsibilities, among other things—within the scope of work undertaken by the inmate in a workshop, for example. This also requires the animation of inmate groups, programmes related to a more unified lifestyle. Furthermore, this requires personal attention on the part of psychologists, and by others responsible for treatment. Evidently, under such circumstances, it requires that the individual be mentally prepared, that is, motivated, in order to permit us to probe and thereby to face certain behavioural difficulties, due to the fact that, at a given time, he feels incapable of functioning adequately within society. Now, at this point, one must make it—and that is why it is said that release becomes the last stage whenever the first stage has been achieved, where he has developed an awareness regarding certain required steps he should take in order to solve them—or to place at his disposal, conditions whereby he may continue that type of treatment—that is why we say that this then becomes a rehabilitation process.

Senator Flynn: When you look after rehabilitation, all your proposals, your entire system—your ideal institution—with all required personnel, everything you need, all necessary technique—all this evidently gives rise to release, but, are you facing this in relation to the role played by the judge, who, while rendering his sentence, had to take into consideration the seriousness of the offense, of the crime, of the necessity for deterrence—for others, at least, who might be tempted to do the same?

Mr. Bourgeois: That's altogether true. This consists of a court-level problem, and without being an expert at that level, let's say that by keeping in mind the seriousness of the offense, that's certainly to be considered. Hence, the judge hands down what, ten years, five years, seven years, eight years—is it our purpose to get rid of him for eight years, then we imprison him, or will it require eight years in order to be able to accomplish an efficient task with this inmate. This then becomes the philosophy: to know, why this, or why that?

Senator Flynn: Because, a decision has nevertheless been ...

Mr. Bourgeois: Yes, agreed.

Senator Flynn: Made by someone who allegedly had in front of him a record related to the individual, besides the brutal fact of the proven crime—a decision has been made.

Mr. Bourgeois: I agree, completely agree with that. But, just the same, we do have to work with that, and we ask ourselves: must we respect these 10 years? We cannot

alter it. We are not empowered to change those things. However—ten years—one may easily become aware, a specialist may become aware, that sometimes within three years, two years, four years, five years, it matters little—the fellow is good, the “timing” is good, and the fellow may return to society as from that date. But should one be unable to obtain this, there arises what we call institutionalization, the individual becomes totally institutionalized; he becomes the type of individual that is conditioned to do things from this hour to that hour, at a certain time, and he could certainly benefit more from the psychological and social viewpoint, were he to return to society.

[English]

The Acting Chairman: But if the ultimate goal of the correctional process is rehabilitation, is not the present policy, with the emphasis upon legal punishment and custody, self-defeating?

[Translation]

Mr. Thomas: Yes, I think you are absolutely right that someone be punished for having committed an offense—you see, this goes back to the very beginnings of mankind. You may all establish the fact that for years, offenders have been punished—even to the extent of corporal punishment; do you have the impression that this has reduced the number of delinquents? There is a basic idea relative to the human aspects of the offender: he does not learn from punishment. A large majority of offenders—there are some who learn once during their lifetime—they have committed an offense; oftentimes, this is attributed to bad luck. They come into prison. This impresses them strongly as punishment—and they shall never be seen there again. But, what we call the true delinquent, the repeater—that type learns nothing from punishment. This is a basic fact.

Senator Flynn: How could he learn?

Mr. Thomas: He would learn, were he placed in a situation whereby he is given the opportunity of developing his resources. For instance, the job problem.

Senator Flynn: You are obliged to lock him up, in one way or another?

Mr. Thomas: Yes, sir, absolutely, and that is already quite important. The first goal of an institution consists of protecting society; and this individual may not remain at large. From my viewpoint, should he be dangerous, he may not remain at large, and that is quite important. This is why the work must be carried out within walled confines.

Senator Lapointe: But, many have come here to witness that prisons are worthless.

Mr. Thomas: In their present state, I think I would agree with them—however, not to that extreme.

Senator Lapointe: But it is said that a prison term worsens the prisoner's situation rather than improving it, since the environment is very . . .

Senator Flynn: That is what you have just said, also.

Mr. Cartier: Yes, perhaps, but it does protect society.

Senator Lapointe: Doubtless, I'm all for it, but it was stated here that it does not constitute a healthy milieu for rehabilitating people; it was better for them to be released as soon as possible — three months later, or . . .

Senator Flynn: Even avoiding their imprisonment at all. One might draw such conclusions from certain opinions expressed.

Mr. Cyr: Evidently, let's say that imprisonment as it presently exists—where an individual is thrown in hodge-podge with others—and where we can notice no difference between a first offender, who is probably young, and who is thrust among repeaters.

Senator Flynn: Yes, agreed.

Mr. Cyr: Evidently, some type of apprenticeship takes place. Hence, my feeling is that, in that sense, it's not worth much.

Senator Flynn: I believe this no longer occurs, that is, it occurs very little.

Mr. Cyr: It still occurs.

Senator Flynn: It may accidentally happen.

Mr. Cyr: Personally, I am presently in a maximum security institution, where are found many young inmates experiencing either their first or second offense, and who are mingled, hodge-podge, with old repeaters.

Senator Flynn: It's senseless.

Mr. Cyr: Yes, evidently, it makes no sense.

Senator Lapointe: This is the reason for your preference related to a penal institution classification reform.

Mr. Cyr: Of institutions, yes, in relation . . .

Senator Lapointe: And you are suggesting a classification applicable only to youngsters of 25 years or less.

Mr. Cyr: Exactly, yes.

Senator Flynn: Agreed.

Mr. Cyr: That's it, and it will give rise to a general regrouping also, not absolutely—first breaches of law for those 25 years or younger. Generally speaking, the older ones are experiencing a second, third, or even a fourth term, hence, that is why we say from the outset that a new classification is quite important in that sense—according to types of inmates or delinquents requiring treatment. Under those circumstances, one may formulate types of programmes adapted to the needs of each population type under our supervision. Furthermore, it is imperative that they be incarcerated. However, I feel that the protection of society falls back upon—whenever the individual is released—he must be capable of functioning adequately; should nothing be done for the sick man upon his release from the institution, one may expect a relapse on his part into the same type of behaviour that had previously caused his incarceration.

Senator Lapointe: You were saying a while ago, let's say an inmate is sentenced to two years, then he says: automatically, I'll be released after nine months.

Mr. Cyr: Yes.

Senator Lapointe: During those nine months, he takes part in no activities, and he does not pay attention to anyone; he simply awaits his release.

Mr. Cyr: Exactly, and that is why, in the last analysis, we feel that should there be indeterminate sentencing, then the fellow would not leave until he had at one time or another participated to programmes—that he might otherwise not have felt the compulsion to undergo such treatment.

Senator Lapointe: Yes, but, upon his examination prior to release—do you not have the right to say “no”?

Mr. Thomas: Yes, surely.

Senator Lapointe: He has a bad character, and does not deserve to be released.

Mr. Thomas: Surely.

Senator Lapointe: You have the right to do that, you have the right to keep him?

Mr. Thomas: Yes, surely.

Senator Flynn: To refuse recommendation?

Mr. Thomas: To refuse our recommendation, or to recommend him by saying that we do not consent to his release. I agree.

Mr. Cyr: Certainly.

Mr. Albert: I feel that here we have to make a slight correction—after nine months of a 2 year term, a fellow does not leave automatically; he only becomes eligible for parole.

Mr. Thomas: Only.

Mr. Albert: At that moment, we may say “yes” to parole; we may say “no”.

The Acting Chairman: How can he leave automatically?

Mr. Albert: What I was saying, simply, was . . .

Senator Lapointe: No, no, he says no.

The Acting Chairman: I am sorry.

Mr. Albert: This is merely a correction regarding what madam said a moment ago, to the effect that, on a 2 year sentence, a fellow who has served 9 months, does not leave automatically; he merely becomes eligible for parole, then, at that time, his case undergoes study in order to know whether or not he should be released.

Senator Lapointe: A while ago, you were speaking of sexual offenses, and you seemed to wish the majority of them to be excused, no, part of those who commit sexual offenses, and you criticized newspapers because, should someone be released, having committed another sexual offense, they sensationalize the issue, and you were criticizing the newspapers, claiming that they are criticizing the individual rather than the deed—but it's difficult to dissociate the individual from his act; should he have performed a revolting deed, well, he himself is a little revolting. It's difficult to dissociate one from the other.

Mr. Thomas: Yes, I understand very well what you're saying, however, our difference lies upon what we discover during the course of our work—perhaps of deeper significance—it's that they are stuck with the notorious image that society wishes to have nothing to do with them. That's the problem. This tends to considerably reinforce the offending propensities of the fellow. Delinquency means to experience problems of socializing, of social relations, and should society make them feel that they are always, ever monstrous, they can never escape from this vicious circle that turns endlessly.

Senator Lapointe: Yes, but how can you want society to not consider them as a source of danger, as repugnant beings, if they violate young girls, or things of that nature; they certainly cannot say they are right.

Mr. Thomas: I say that there is certainly an element of truth in what the newspapers print, I think that they are right in wanting to rise up against their detractors.

Mr. Cartier: The important fact regarding the distinction between the deed and the man doing the act—is that an outrageous act is so 100 percent, whereas the man perpetrating the revolting act is not, himself, 100 percent outrageous.

Senator Flynn: Agreed. But I am not . . .

Mr. Cartier: That's the part that we should perhaps not lose in that man. The tenuous remaining ten percent, that may influence the inimical 90 percent; that we must not lose. That is all we have left.

Senator Flynn: Even should newspapers follow your suggestion, and mentioned only revolting or outrageous crimes, and never described the author, or monster—I fail to see how the population at large could differentiate between the outrageous crime and its author.

Mr. Cyr: I believe that the population is capable of such discrimination, should it be educated along that line. For example, should newspapers judiciously make such difference, the population will also make out this difference, since the communications media wield enormous influence, in any case, I feel this is so in relation to the public's emotional reaction.

Senator Flynn: Should all crimes be considered as a form of illness, things are all right. There are certain illnesses whose mere mention was formerly tabooed, as you know. Today, however, one tends to differentiate between the individual and his illness—however, we would probably have to begin by considering all crimes as illnesses—and I am not prepared to go to that extent.

Mr. Belanger: But, rather than using the term “illness”, I feel that this is why in our report, we often prefer to employ the expression: resocialization or re-education. Very frequently, these things simply involve educational deficiencies involving adolescents or children that at times lead to . . .

Senator Flynn: You are referring to juvenile delinquency—there, you have an altogether different problem.

Mr. Thomas: these are often juvenile delinquents.

Senator Flynn: Yes, agreed. But I think that legal authorities deal with them on a special basis.

Senator Lapointe: You keep referring to "the fellow who behaved so!" . . . You never refer to women?

Mr. Thomas: Because we are working with men.

Senator Lapointe: Does this mean that only men are criminals—that there are no lady criminals?

Mr. Albert: We are simply saying that due to circumstances, we work exclusively in men's prisons.

Senator Flynn: Excuse me, Senator Lapointe. Perhaps, do you mean that it is more common for a man to assassinate his wife, than the other way around.

Mr. Thomas: The thing is, that so far as we're concerned, we in fact work only with men. Should others have forwarded reports—regarding women's institutions—that might be equally interesting.

Senator Lapointe: Yes, but are there psychologists working in women's prisons; that's what I wish to know? Yes?

Mr. Thomas: Yes. I know it from hearsay, but I have no personal knowledge on the matter.

Mr. Albert: Yes. I know of one in Kingston through personal experience.

[English]

The Acting Chairman: In your remarks, Mr. Thomas, according to a note I made, you indicated that the Board was taking an honest risk due to a lack of information. You suggested the members were making arbitrary decisions based on useless reports.

Mr. Thomas: Yes.

The Acting Chairman: Would you care to elaborate on that statement again, please?

[Translation]

Mr. Thomas: Let me tell you how we obtain information regarding an inmate. Very often, we do not know just what he is doing in that milieu. So, an officer, an instructor explains this to us; and, actually—the institutions are such that we must find our personal contacts, ourselves. The inmate arrives—we see him only in our office—he essentially answers to social workers or classification officers; they see the inmate and perform what we call: case history. The inmate serves his term. Oftentimes, many incidents occur within the institution. When he becomes eligible for parole, the Parole Officer consults the Classification Officer—and the former personally sees the inmate inside the institution, during one or two interviews. Then, depending upon the case, he will request that an inquiry be made regarding his family. In view of the shortage of parole officers and of the great number of delinquents, they are prevented from making a thorough study of the information received from there. Hence, the inmate will often say: I did this, I did that, and things went very well with my employer. Should you, at times, have time to contact their previous employers, you might make worthwhile discoveries—he had not shown up in the morning because he had been drunk—but kept insisting that he was not the drinking-type. That, we do not know. He certainly does not drink within the institution. So, what takes place, is that we do not obtain certain facts.

Insofar as the offender is concerned, this alcoholism problem is quite important. For example, we must know whether the offender really consumes alcohol, or whether he doesn't. To us, he says he does not drink, but we do not really know. Another thing is that oftentimes, we do not have the court or proceedings records. It costs a fortune; it costs \$1.00 per page for court proceedings, and some make up three volumes, that thick. It might cost the institution \$500. in order to have them—which is prohibitive. But, highly valuable information may be had from court proceedings records, in order to discover who has really known the fellow—perhaps at the time the offense occurred, or parents or friends—who know something—and there we might have testimony or information of greater validity than that uncovered from simple interviews. Police authorities have certainly dealt with the case; the judge conceivably elicited certain facts; the Crown prosecutor drew out information; the Defense attorney also—all this has been discussed. This does not mean that the trial has been necessarily just: we have recently had an example involving Mr. Roux who has been freed after nine years and declared innocent. But there nevertheless remains that we have there a gold mine of substantial information, to which we have no access—except for certain occasions—should we have contacts with the Defense Attorney willing to lend us his notes.

Senator Lapointe: Then, you say that it is far too costly, first of all, to obtain the documents, and secondly, due to the fact that you do not have a sufficient amount of time to assemble all these documents, or to study, analyse, and synthesize them?

Mr. Thomas: That's exactly it. There exists such institutions as the Philippe Pinelle Institute in Montreal, where people take the time to do that. A psychiatric appraisal is tantamount to a police inquiry. We evidently visit with the victims—I am not saying that we ought to do this in all cases. Let me say that there, we obtain information as a whole, the validity of which is far greater than that obtainable within our institutions—when we are overburdened with work—and furthermore, at times, we might have to make widespread contacts that would necessitate much time. Whenever the family resides the Abitibi area, a social worker of that region may be asked to investigate, I think; but oftentimes, only a brief resumé of what has transpired, is sent us: could you explore this? He is not too, too sure as to what we want, but he proceeds to visit with the family and, as a general rule, he sends us a two or three page report. But he does not always reply to questions that have arisen at the institution, since we have seen things, since we have been in contact with the inmate's problem. One asks: I would certainly like to know what goes on. Let me give you a specific example: recently, a fifty-year old family man had indecently assaulted six of his daughters. The Quebec City Social worker—the family lives in Quebec City area—investigated that case. I myself had been in the process of making a psychological appraisal. I urgently required that investigation. He in no way replied to the questions arising from my psychological appraisal—How had the wife reacted to her husband's acts? He had in no way explored that aspect, except for the fact that an unfortunate incident had occurred—and that I think things should go well, from now on. I feel that there is more to it than that. A wife will just not accept such an incident.

Senator Lapointe: Who said that? Did the wife say that?

Mr. Thomas: The social worker quoted the wife as having said that. In my case, I wonder: what can the commissioners do with this? They are not aware. One may not rely upon this as being valid information. The social worker said: the wife says that this is just an unfortunate incident, I feel that things should turn out all right. I feel that we ought to probe more deeply into this.

Senator Lapointe: No doubt!

Mr. Thomas: It required a deeper probe, but we did not go any further. I'm giving you this one example. He arrives in the Montreal area, he lives in Quebec or the Gaspé Region, his family resides over there. Oftentimes, we have to go and see him. Also, there exists contacts with previous employers, adaptability to work situations; if anything is important from an offender's viewpoint—that is it. How did he behave? Was he on time? was he productive? what went on?

Senator Lapointe: So, does a parole inquiry require expenses, on the average, expenses amounting to how much money?

Mr. Thomas: I have not assessed it, I couldn't tell you. We might have to make a more thorough study of the problem in order to see what expenses are involved.

Senator Lapointe: Evidently, it also depends upon the distance.

Mr. Thomas: It depends upon distance. It also depends, if you wish—upon the number of personnel that we have. At the same time, it depends upon the possibility of obtaining court records. Was the trial short? Was the trial long? Should the trial have been long, it is going to be very costly. I am referring to trials having taken place in Montreal, since, I feel that in the case of small towns, settlements are sometimes arranged between parole officers and the Court Clerk; and, this is far less costly—it is even free, sometimes—whereas, in Montreal, it's prohibitive; we cannot afford it, it costs too much.

Senator Lapointe: And to touch upon an altogether different subject, do you think . . .

[English]

The Acting Chairman: I have a supplementary question. With respect to community investigation reports, you indicated that they are useless. Would you say they are useless with respect to the application for temporary absence? You may or may not answer that.

[Translation]

Mr. Thomas: I think that nevertheless, the problem is quite different for temporary absence, that is, it is less important. Whenever you parole someone, and you say: I think that his release, at least, I hope it will benefit him so that he will remain on the outside and thus become an honest citizen. However, it is quite different to allow a one or two day temporary leave, permitting him to visit with his family. Oftentimes, they also have duties—while I'm visiting my family, I'll also try to see my employer; things of that nature, altogether different. It's quite different. I think that it is quite important to get in touch with the

family regarding a temporary leave. I do not believe that this had been done in the Geoffroy case. He had stated: I want to have a mother for my children. It had not been all that clear.

Senator Lapointe: Nevertheless, you carry out a short inquiry?

Mr. Thomas: That is insisted upon by the Board. We, ourselves, do not necessarily require an inquiry. This does not prevent us from getting in touch with the family—we want contacts with the family—and we often receive the mothers—perhaps, more so than fathers—mothers and wives. He does not experience the problem within the institution as such; he lives on the outside also, and there lie his real problems. Whenever he is inside, he cannot leave. Frequently, the wife or the mother is invited—not only to see the problem existing between them, should there be one, but also to permit the validation of information. One may say, for example: what did you notice about your son's behaviour during the days prior to the offense? On the other hand, for example, he himself will say: I do not know, I did not feel too well; I was not working, I felt a bit depressed, then, all of a sudden, I decided to breach the law. Very well, the mother will probably tell us many other things that the fellow had never told us. He spent six months alone up North, because he had money, and she did not know where he had obtained that money from. It is nevertheless strange; we had not known. We learn of it right then, and, when this occurs at the time of parole release, it is already a little too late to do anything.

Senator Lapointe: What percentage of inmates tell lies? Are they all liars, or are there some that frankly tell the truth?

Mr. Thomas: No, they are not all liars. A large percentage are liars, but liars only in the sense that: If I tell him the truth, they won't let me out; if I tell him the truth, they won't transfer me to such and such an institution; I won't have the opportunity of obtaining a temporary leave. With this type of individual, we are obliged to double-check everything they tell us; and should we really want—or, in the event we cannot prove the truth, we must then obtain testimony from various sources—that permits us to establish reconciling factors.

Senator Lapointe: Are there any who are mythomaniac, really mythomaniac, who imagine all sorts of things, and who are sincere in imagining that?

Mr. Thomas: Yes, but only a small percentage.

Senator Lapointe: Mr. President, may I then ask a few questions concerning a different topic?

The Acting President: Yes.

Senator Lapointe: The rehabilitation of ordinary offenders implies inducing him to not commit similar crimes any more. Do you think that you may likewise succeed insofar as political, philosophical or other types of prisoners are concerned? May his views be changed, or is it impossible?

Mr. Cyr: I believe that in such a situation, we are operating at a different level. I think that prisoners that fall in the category you have just mentioned, may evidently change their mind. As is true for everyone, an individual may change his views, just as everybody may change their views—evidently, this is quite difficult to foresee. I do not

think that come the month of May, the individual has changed his views, and that he will so inform us. He may also tell us that he has changed his views due to his desire to leave, or things of that nature. From my viewpoint, it is, in reality, quite difficult to know whether the fellow has progressed, and then realizes that his ideas had not been acceptable, or that he no longer accepts them—thus adopting a different outlook. This evidently involves logic and the intellectual processes of human reasoning. There will also be inmates who change fields of interest, who are not political, that is—non-political reasoning processes—they have committed reproachable acts, as such, prior to being imprisoned. Will they change their minds? Will their conception, regarding society, change automatically, due to their stay at the institution? I feel that the same question arises concerning that type, also. There are inmates, for example, who are rebellious because society will ever have rejected them, and they have always been under compulsion to perpetrate certain acts, in order to survive within a society that tends to push them aside, etc., etc.; such rationalization is typical of their erratic reasoning patterns. Will they, at some stage, realize or share our political views? That is the big question. I have no way of knowing whether they would supply us with a reason, nor whether we could ever be in a position to feel that they have changed their views. I must also admit that there exists no survey, that we have no closely followed cases on a regular enough basis, to establish such conclusions.

Mr. Belanger: I believe that the same thing might occur either inside or outside the prison—as end result—from the viewpoint of political ideology. I feel that a new outlook on life might evidently result—inside, as well as outside the institution. This is what occurred within the Quebec society, where certain leaders changed their opinions from a basis of personal experiences. In that respect, this may arise outside just as easily as inside the institution.

Senator Lapointe: Yes, but they do not alter their opinion due to the influence of psychologists or social workers, or is it, rather due to personal introspection?

Mr. Belanger: No, not necessarily.

Mr. Albert: Let's say that this is a thorny question—such as in your case, madam—you presently hold definite opinions regarding a host of things, and in order to produce a drastic change toward different outlooks, I personally feel that I might require to do a great deal as a psychologist, in order to change your outlook.

Senator Lapointe: Are there hidden implications to be understood from this?

Mr. Albert: No implications, Madam. This is simply to explain that it is quite difficult to answer that question. What can we do in that case? Simply, I feel that we must carry out an analysis of the fellow with whom we are dealing—should it be possible for us to see him, in the event that he should feel the need for some type of help.

I think that in all individuals are found both weak and strong points—it involves long-range work to develop awareness within him; and, perhaps with much patience, a great amount of patience, we may arrive at interesting results. There are no magic formulae applicable to such cases. It involves some type of acquired clinical flair, along with experience, that permits us, at times, to per-

form simple things—that with time, gives rise to gradual change. But, yours is a very difficult question, and I really cannot answer you.

Mr. Belanger: I think that this involves what is termed in English: "reality therapy"—generally carried out by persons capable of discussing with those people—whether it be a psychologist, a social worker, or someone confined to the discussion of social problems.

Mr. Cyr: I believe also, that there is a difference between the act for which he has been imprisoned, and the political views he may share. The fellow is imprisoned for a given act, and not for his ideas, I do not think so, anyhow. Then, I think that in that case, will the fellow share the same ideas upon his release, and will he once more perpetrate the same acts, leading him back to prison. This may be a likely possibility that requires our attention in this matter.

Senator Lapointe: Well, let's say that he had committed a political assassination—he may, upon his release, have somewhat modified his outlook—thinking that by other means, he may succeed as well as by committing murder? Is this what you mean?

Mr. Cyr: Yes.

Senator Lapointe: But let's return to a previously discussed topic from your report; when, for example, you mentioned that the nine month period for car thieves is not adequate to effect a change in their outlook, or to somewhat alter their behaviour—how long do you think it would require, on the average—granted that individuals vary one from the other.

Mr. Thomas: Let me illustrate from a provincial institution, where the aim is truly, rehabilitation—but with juveniles; this is in Boscoville, in the Montreal area; here, there is great emphasis along those lines; two year terms are compulsory. In certain cases, Boscoville has been awarded indeterminate sentences of up to four years. The car thief is not only a car thief; he is a delinquent, who, in many spheres of activities, will appropriate people for himself—as objects—appropriate them in one way or another; he is that way in regard to money, he is like that with women, he behaves in the same way with his boss—he wants to teach him a good lesson,—Moreover, they are capable of demonstrating a gentleness, thereby swaying us all along the line. But, once our back is turned, pftt . . . just like that. Hence, we may easily be caught off guard and say: I fail to see what can be so serious about him? However he does, to a large extent, manipulate people. He is not only a thief. He has been arrested for a violation. I agree that he is not to be arrested on account of a lifestyle that, in the end, does not quite infringe upon laws—but consists of borderline situations. It's the same thing with women; they are manipulated; they are blackmailed: if you leave me, I'll kill you, I'll hit you—he has no intentions of doing so—but it so terrorizes the woman that she stays with him. The same thing applies to employers. He will take nothing from him; he will say to his employer: you have no right to force me to do such a thing; he will not submit to anything. Then, all of a sudden, he commits an offense. This is what it's all about—it's his style of life that requires changing. The offense is merely an air bubble that surfaces in an anti-social and forceful manner. But underlying all this is a criminal world, where from he

refuses the values of society, he refuses emotional involvement, he refuses the respect of others—it's "me, myself, and I", in all areas of personal activities. Hence, so far as he is concerned, much time will be required to effect a worthwhile change.

Mr. Albert: I wish to expand upon my colleague, Paul's opinion regarding what was mentioned earlier concerning "reality therapy"—based upon reality. For example, an inmate will show up, and after I will have become familiar with his problems, he will tell me, simply: I have a two year term, whether or not they release me on parole, upon my return to society, that should extend over a two year period at most—it's less than that, since in reality, there will be a compulsory supervision period,—he will tell me: I will relapse into crime, I will continue,—coldly, logically, just like that.

What should I tell that fellow, well, should I be permitted to do so, I would merely tell him: you will not be paroled, you are going to stay here, you will remain. Under such circumstances, I have to personally accept the law, as drafted; this law has been established by the society of which we are part, and which enacts that, in those cases, the term is of two years. Well, so far as I am concerned, I would personally tell him: you shall stay, you will remain, because I am unable to tolerate your prevalent attitude, due to the fact that it is unacceptable to society.

Senator Lapointe: But, this does not involve parole, where he has been sentenced?

Mr. Albert: No, this is one of society's laws that has established that for a certain type of offense, after having appeared in court, the judge will sentence him to two years; but the fellow himself, knows that he will relapse. For example, regarding drugs, the fellow will say: I'll become a peddler, once I'm out, I'll keep on. But he serves his 2 years, for, as a general rule, no positive recommendations will be made, in principle, regarding such cases. But he will return to crime, that is a sure thing.

Senator Lapointe: You might estimate that in those cases, the sentence be prolonged?

Mr. Albert: I see it somewhat along the lines that Mr. Thomas mentioned a while ago—it ought to be indeterminate—or to an extent, definite, since in truth, the fellow leaves, he is released—but he still remains a menace to society.

Mr. Thomas: We cannot do anything—it's the end of his sentence, and so long.

Mr. Albert: The individual says: I've calculated the risks, I'm now paying the consequences, I know what I'm doing; and I also know what I'm about to do.

Mr. Cyr: In the final analysis: "I've paid for my crime".

Mr. Cartier: But if we should consider definite sentences, then let us first think of multiplying the services within institutions, since then, this would be the equivalent of condemning everyone to remain there.

Mr. Cyr: For the maximum period.

Mr. Cartier: Yes.

Mr. Albert: Yes, it's a two-edged sword due to the fact that the institution really ought to be oriented toward treatment—so that a team be really involved, nearly 100%, to be able to work, to have a sufficient amount of time to deal with cases, and to be enabled to accomplish a job that will in time and place, permit the making of decisions, for, otherwise, it becomes: we'll see, we'll see. It's no question of "we'll see, we'll see"—we must work, we must do something.

Senator Lapointe: Are you truly optimistic regarding the possibility of rehabilitation for a large number, or is it only a small number?

Mr. Albert: It's quite difficult to answer, Madam; just the same, we have to be realistic so as to see just what we have going for us at the present time, its potential, or, in short, its elements—such as classification officers, social workers, psychologists, workshop instructors, finally, all these people—we must make use of what we have. It is not that we do not wish to have new staff, certainly that such staff would be welcome—that's for sure.

To give you numerical estimates whether our chances would be improved, or whether they'd be lessened, whether we'd be more optimistic, or less; we just must be optimistic, for, otherwise, we'd drop everything,—and we cannot drop them.

[English]

The Acting Chairman: In your submission you state that a prisoner will be ready when specialists in the institution make that decision. I never cease to be amazed that everyone seems to think they can make better decisions than the Parole Board: the police want to make the decisions; the judges want to make the decisions; even the inmates from Drumheller felt they could make better decisions. The question I want to pose you is this: who are these specialists? I want you to be specific and tell me.

[Translation]

Mr. Cyr: In order to answer that, I think that what we meant by "specialist", we subsequently corrected. This involves all the treatment-dispensing staff: not only psychologists, not simply, criminologists; this may also involve animators connected with group homogeneity activities; it may involve the parole officer—it involves all those who look after the treatment of the individual, who are involved and engaged in the treatment of inmates,—the treatment-dispensing staff.

[English]

The Acting Chairman: All of whom at the present time have an input into the decision finally arrived at by the Board.

[Translation]

Mr. Thomas: Yes, we ourselves nevertheless corrected the expression that we previously used—not the expression—in our minds, it corresponded to a reality—it was far too restricted. I think that the police might have its word to say. I think that guards, who work with the inmates on

a daily basis, and who know a tremendous number of things—should we be enabled to work with them, since this may be one of the most important source of information issuing from institutions—ordinary guards, and, at the same time, instructors—and we would like them to become involved in this so that their observation traits might become enhanced, thereby enabling them to give their opinion, so that they too might be able to tell us: in my case, I saw his behaviour in our workshop, he did this, or he did that; that is quite important. Such that the word “specialist” is to be deleted from our submission, and is to be replaced by a nomenclature designating all the people, who in one way or another, are involved in the administering of treatment within an institution. I think that a workshop instructor is as much a type of practitioner, within his means, as we might be.

Senator Lapointe: In any case, he may be an important witness?

Mr. Thomas: Extremely important, and even more than that.

Mr. Belanger: This is why we can hardly envision the participation of all these people seated around a table—involved in the decision-making process—which would include a great number of people, while discussing a case. We tend rather to envision all these members as stationed within the institution, as part of a continuous interaction with guards, instructors, etc., for somewhat exchanging information on a continual basis—that type of things—regarding the inmates under our supervision. When at certain times, this is not done, irresolute situations result,—what does a guard think, or what does an instructor think; it is quite difficult to put those things on paper, due to the fact that these are daily occurrences, or small daily details, at times. That is the reason for a more emphatic wish on our part that decisions be made by people from within the milieu, who live on location—not necessarily on a continuous basis—but who might be more directly involved in the daily activities of inmates.

Senator Lapointe: But, who be responsible for the preparation and compilation of this record?

Mr. Belanger: The parole officer, as is presently the case; we do not wish to change his role, in that sense.

Senator Lapointe: Then, he would have to be on the inside, so as to compile all this—or else, he would have to make prolonged visits?

Mr. Belanger: For example, two or three day stays within the institution.

[English]

The Acting Chairman: I wish to return to the second part of the institutional report. When inmate “X” is going before the Board, do the institution staff, including the people you have just mentioned, the instructor from the shop, the psychologist—the inmate training board, I presume this is what it is called—not sit down and evaluate this man in compiling the second part of the report? Who compiles the second part of the institution report?

[Translation]

Mr. Thomas: No, in fact, all the staff members that you have just mentioned do not actually meet together, in order to evaluate. The parole officer sees the inmate during an interview. He frequently asks for the opinion of the classification officer, who, oftentimes, has seen the inmate once a month,—sometimes less often than that—and he requests a psychological report, should it be necessary; he requests for an inquiry into family relationships, should it be necessary; and that is all. We do not know what really went on at the institution. The classification officer is often posted in the administration building, and, once in a while, he is informed as to what goes on inside—unless it be very noticeable, such as when the inmate has broken things, assaulted someone, or other things; otherwise he is left uninformed concerning the prisoner; neither does he have time to go and get all such information, and institutions are not organized so as to permit the natural communication of such information, on a regular basis.

So, what occurs is that whenever a parole officer prepares his dossier without having first contacted instructors or guards, or taken other such steps—should he then present this to the commissioners who are to evaluate the data—some things are missing, for example, they are not sure enough, and they will request other evaluations that have not been made—and the decision is awarded.

Senator Lapointe: Don't the workshop guards, as you were saying a while ago . . .

Mr. Thomas: Yes, the instructors.

Senator Lapointe: Don't they make weekly reports regarding the conduct of each inmate—a report that one might obtain from the files, and affix to the testimony of the psychologist?

Mr. Thomas: Yes, in fact, you are bringing up what is presently going on.

Senator Lapointe: Yes, yes.

Mr. Thomas: What occurs, in fact, is that every three months, they make up what is called an evaluation sheet. This includes many items, such as: attitude towards authority, attitude towards rehabilitation, work output, or the attitude of the prisoner toward his work—things of that nature. They will score them: A, B, C, and D. Only in cases where the inmate demonstrated a truly special attitude, will a so-called observation report be made. These are our information sources—we do not contact the instructor—but he, he really knows many things.

Mr. Cyr: The A, B, C, D, of the evaluation process is evidently a personal interpretation of each of the evaluators. B, means a certain thing to one evaluator, while it may mean another thing to another man. Hence, it is not, to a great extent, valid as a source of information.

Mr. Albert: The rationale for what we have discussed during the morning session—has been that one must live with a person in order to know him—that is what counts. But, without truly being the critic in regard to adopted decisions leading to parole, I personally feel, and I mean, personally—I believe that the individual on location is the best judge toward making a decision. I think that the treatment dispensers, that includes classification officers,

officers, instructors, psychologists, etc., are in a particularly good position to know whether or not a fellow ought to benefit from a parole release. Furthermore, at the present time, the parole staff very frequently approach us for consultation, to know our viewpoint, or what goes on. Unfortunately, due to a lack of time, lack of personnel—we cannot do it in all cases. Furthermore, I think that we often lack information, on the one hand, from their officers, due to the fact that they may not live inside as we do, and, therefore, the decisions could be better in many cases. This is why I feel that, the more we'll be able to integrate the two services together, the easier it will be for us to render better and more worthwhile judgments concerning individuals.

Mr. Bourgeois: It is in fact quite difficult to put on paper, in black and white—to record the gradual change regarding an individual—particularly when one has not participated to said evolution; I think that this is it.

Senator Lapointe: Well, do you not believe that the general philosophy of parole officers, or their office staff—is that they are most objective due to the fact that they amass all the information obtained—and that they are less conditioned by a sympathy that they might feel for an inmate, or a dislike for another?

Mr. Albert: It could be.

Senator Lapointe: They are above all that.

Mr. Bourgeois: No., but, what sometime occurs is that we have a hard time to make them understand the progress that has already taken place—the evolution that has gone on. The officer, the agent who is to come on location—he will take note of antecedents from the F.T.F.—the individual's violations, and, at that moment, the “background” of the offense is quite clear; but, what is unclear

is what has been accomplished at the institution during the last two, three, or four years. These things are difficult to grasp; and at times it is difficult to make clear that type of thing by tangible illustration, due to the fact that it is expressed as a type of reformation having affected the personality of an individual—compared to the charges that may seem quite serious to an individual.

Mr. Albert: Madam, I would simply like to add that I feel that these groups—for we have spoken of groups—one speaks of parole releases, and of people employed in institutions, and, personally, they remind me of well-intentioned people, each of whom works on his own, but who are not as yet—we have not found the formula—I personally could not tell you—but we have not yet found the formula to put all this together in order to perform a better job. This is the fact that we are attempting to put forward: that everyone works according to his own best intentions, but that we could merge these two groups, and thereby obtain more interesting, and more valid results.

[English]

The Acting Chairman: I presume the objective of our hearings is to endeavour to find a better system than the general “hodge-podge” to which you have referred.

I express our appreciation to you gentlemen for your submission and for the manner in which you have answered our questions. Certainly your submission has been enlightening and different from the ones which we have had to date; and I am sure it will make a worthwhile contribution to our deliberations.

Once again, I extend to you good luck and best wishes in the very difficult role you are performing.

The committee adjourned.

APPENDIX

[Translation]

Brief to the Senate Standing Committee on Legal and Constitutional Affairs, concerning the Study on the Parole System.

Submitted by the Psychologists
of the Canadian Penitentiary Service
Quebec Region.

APRIL 1972.

Foreword

The main function of the National Parole Board at the present time is to determine whether parole should be granted in the case of each prisoner in federal institutions, unless a prisoner informs the Board in writing that he does not wish to be granted parole (paraphrased from: The Senate of Canada, proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, no. 12, Dec. 1971, p. 12:39).

Therefore, before granting parole, the NPB must be assured that the inmate has taken maximum advantage of his stay at the penitentiary, that his rehabilitation will be helped by parole, and that his release is not an undue risk for society.

Moreover, NPB states that a prisoner must have served one third of his sentence before he may be granted parole.

Recently, Mr. A. Therrien, vice-president of NPB, told us that this body has not been created for the purpose of treating criminals; he saw the role of NPB as that of studying each case with the help of various sources of information, reports and inquiries, and of having to assess the capacity of a prisoner to take advantage of release on parole. Mr. Therrien added that the present membership of the Board was in accordance with the various trends in society and that through such representation, NPB was in a position to make decisions in line with the wishes of society in general.

These few remarks that we have been able to gather give us the image of an agency limited in its role, its perspectives and its orientation, based on almost no principle that we could consider as basically firm and logical. In practical terms indeed, this means that NPB, after studying a case, makes a decision, and if the prisoner is released, the Board takes the responsibility of supervising him. Any support that the Board could grant to the parolee comes as an added feature, and not as an obligation that it may wish to discharge itself of, and not as a prime aim, since that would become a treatment perspective.

Thus, we believe that the criteria used by NPB to grant parole are vague and contradictory; we make the following recommendations as a reaction against the present status of penitentiary institutions and NPB. We have considered the present status of penitentiary institutions because we cannot dissociate the parole system from that status.

I—General principles and definition

(a) Basic principles:

We recommend:

1. That the purpose of a release on parole meet the objective that institutions should aim at, that is rehabilitation of the prisoner.

2. That parole be granted specifically on the basis of continuing a treatment which actually was initiated in the institution itself. Parole should be the last stage in the rehabilitation process.

3. Finally, a third principle must be added to the first two; parole remains and must remain a treatment stage always taking into account protection of society. Such protection must first be assured in an immediate sense when treatment has not given positive results; it is then necessary for such treatment to be continued in an institution and not on parole. This protection must then be assured in a wider sense by the fact that true protection of society is based on true rehabilitation of those of its members who do not comply with its code.

(b) Role of the Institutions

Because we consider the Institution as having the first responsibility in the rehabilitation process before such responsibility is passed to the parole service, we recommend:

1. That institutions be fully responsible for the rehabilitation programs. Because, in our opinion, parole is one stage in rehabilitation, it is those responsible for the treatment who would see to it that each individual go through various stages leading to parole and full release.

2. That prisoners be granted parole when they are ready and not, as is presently the case, when they have served part of their sentences. A particular prisoner will be ready when specialists in the institutions and those who later will be responsible for him in society come to the conclusion that this individual may enter the next stage in his rehabilitation.

3. That in view of this objective, institutions be no longer classified according to the security levels only, but according to the treatment requirements and the personality of the sentenced individual.

Thus, instead of having maximum, medium or minimum security institutions, we recommend that institutions be classified according to the following:

—*control institutions*: for the non-adherent or someone who cannot adequately function without being closely supervised by other persons.

—*participation institution*: for the co-operative person or those who can engage in a rehabilitation process. Participation in the preparation of the institution program could be partly done by the prisoner.

—*youth institution*: for sentences individual of 25 years and under. At this age, a person has a particular behavioural pattern and particular needs.

—*psychiatric institution*: for anyone who needs very specialized treatment because of lack of intellectual resources or very serious affective problems.

—*semi-open houses*: for those who progressively return to society with daytime parole and for those who, although regularly paroled, experience difficulties and run the risk

of losing their jobs and the relationships that they may have initiated with significant people.

—*reception centre*: for the person arriving from court. During that stage, the person will be assessed and a program of treatment will be established, after which he may be sent to an institution where such a program can be implemented.

—N.B. Adjustments will probably be necessary based on future observation that can be made of the individual's actual adaptation to the established program or based on the positive or negative evolution of the individual during his rehabilitation.

4. That each individual program should be staged progressively; each stage should be another step towards rehabilitation. For instance, after a stay at the Reception Centre, an individual would be sent to a control institution where he would go through the various stages of the program and reach a status. This status would make him eligible to become member of a participation institution, then of a semi-open house, and finally to become a parolee.

(c) *Role of the Court*

Rehabilitation must be the objective for the time spent in an institution. When rehabilitation is considered as having reached a proper stage, it is contrary to rehabilitation to maintain someone in an institution. This raises the problem of the length of sentences. The length of a sentence, and also the eligibility date set accordingly, are primarily based on the type of offense and on whether the individual has recidivated; rehabilitation, on the other hand, takes into account the evolution of the individual's personality.

Because of the present situation, it happens that some individuals are released at the end of their sentence and constitute a real danger to society; moreover, other persons are placed in revolting situations, as they have to wait the eligibility date (for parole) in order to go through another stage in reintegrating society.

We propose a drastic change in the philosophy of the Criminal Code in order that change brought into the fields of rehabilitation be also reflected at court level and that there be some coordination between those who deal with delinquency. We therefore suggest:

1. That justice be re-adjusted on the basis of new knowledge and discoveries concerning the deviating individual and rehabilitation.

2. That sentences take into account the objective of rehabilitation and that in this respect an individual be released when he has reached an acceptable socialization level (when he is able to respect others sufficiently for what they are or have).

3. That an individual be eligible for parole when he is ready, that is when he has gone through the various stages deemed necessary for him. Therefore, there should no longer be any eligibility dates, as is the case now.

(d) *Roles of other agencies*

The aim being social rehabilitation of the individual, participation of any agency and service dealing with social problems becomes extremely important. More-

over, it is of paramount importance that people from outside the institutions be interested in helping and receiving those who, for one reason or another, have rejected or attacked the society into which they must return. We propose:

1. That these agencies make their commitments known and be accountable for their work.

2. That these agencies should pay for more attention to the family and the milieu where the individual will return after serving time in an institution.

3. That these agencies help the person who leaves the institution in getting organised socially and give him the fullest support.

4. That these agencies start their work from the moment the individual is put in an institution, in co-operation with the personnel, in charge of treatment and that they increase their efficiency by finding new ways of involving more citizens from outside.

II *Reflections on the Law*

A change in the principles and philosophy which are to govern the establishment of a new treatment system for individuals defined by the Law as criminals involves a deep change in the spirit of present Acts and their implementation.

(a) *The Criminal Code*

Courts establish the guilt of the individual who departs from standards defined by society. However they are not qualified to establish a program of treatment and to decide when an individual is ready to adequately function inside society. We propose:

1. That sentences take into account the need for treatment and not the punishment that an individual would deserve. For this purpose, the institutions need to have more latitude as to whether they should release an individual or not.

2. That sentences be given by judges in terms of a minimum and a maximum and not in a fixed and determined way as is the case now. As stated earlier, it is impossible to determine in advance the length of treatment.

(b) *The penitentiary Act*

1. That penitentiaries be redefined in the Act as Institutions providing treatment for individuals having social behaviour problems.

2. That penitentiaries prepare the complete release of an individual by working in co-operation with his family or his milieu.

(c) *The Parole Act*

1. That the decision to grant parole be based on the response of the inmate to his program. It is primarily those living close to the individual who are in a position to know whether such an individual is ready to function in society. We ask that eligibility dates as they now exist be removed, but that an individual become eligible after he has gone through the various stages of his treatment.

2. That the regional parole offices become assistance clinics instead of being supervision offices as is now the case. This involves that parole officers should have a

much lesser number of individuals to deal with and assist.

(d) *The Criminal Records Act*

We do not have enough information on this item to be in a position to make proposals. However, there is a related problem upon which we would like to emphasize: that is the malevolent and hate publicity in some newspapers as regards criminals. Such publicity is made more against the person of the offender than against his offence. We propose that the law forbid newspapers to attack the person of the offender and oblige them to limit themselves to judgments on the offence itself. There are scabrous acts but no scabrous people. Such confusion in newspapers between the act and the person greatly reinforces the distress of offenders who are personally facing the same problem and at the same time it reinforces emotional rejection of them by honest citizens. Such repeated publicity seems to us as shamelessly adding fuel to a stone by fire and greatly impairs, by dint of sensationalism, the rehabilitation of the individual.

III *Sharing of Responsibilities in parole matters*

—That provincial authorities have their own parole service.

—That the Governor in Council continue to take decisions only in the case of convicts whose criminal offence itself is related to some political reason.

—That provisions in the Act concerning corporal punishment be amended to remove it from the list of possible punishments. If such removal is impossible, we propose that the National Parole Board retain its power of having it suspended when the case warrants it, in the same way as when someone is prohibited from driving.

—That the Chairman of NPB be assisted by an executive board and by consultants for matters concerning pardon, the organization and co-ordination of local parole services, and research; these people would be responsible for taking the decision.

IV *Membership of the Parole Board*

(a) *On the decision-making process*

1. That the decision of granting parole be no longer the responsibility of the members of the Board. At the present time, such decision is taken by persons remote from individuals about whom they have to make a decision.

2. That the decision to grant parole be taken jointly by people responsible for the individual in the institution and people who would be responsible for him were he to be released. Thus, people making the decision would be very directly involved in case of rejection or acceptance.

3. That the role of the members of the Board be restricted to that of adviser and verifier of decisions made in the institutions.

(b) *On assistance clinics*

1. That parole officers prepare or see to the preparation of the milieu where the individual will be received when returning to society.

2. That these officers do some planning for released prisoners in terms of work or possible studies.

3. That officers work as much in relation to the milieu of the released prisoner (family) as with the released prisoner.

4. That relations between police and parole services be intensified.

V *The National Parole Service*

(a) What should be the role of the National Parole Service and its regional officers? The role of this service should be to help prisoners to return to society for the benefit of society. It should also more actively take part in the drafting of treatment programs to be carried in institutions.

(b) To what extent, if the case occurs, should National Parole Service and federal penitentiary personnel integrate their activities as regards treatment and education programs for prisoners in institutions and parole programs?

All these services should integrate their activities and work in close co-operation in order to make maximum use of all resources available to prisoners and in order also that there be continuity in the treatment. It is necessary for treatment to begin in an institution and to be continued outside by persons having already established a relationship of assistance with the prisoner.

VI *Application for Parole—Eligibility to Parole*

If the institutions are not yet organized as treatment centres such as we have suggested, we propose that:

—applications for investigations be made one year before the eligibility date in the case of life sentences.

—The prisoner's appearance be abolished, as his case will be discussed by persons directly knowing the prisoner, and as the decision will be made by these same persons.

—that greater use be made of the Act as regards exceptional cases in order that decisions by local commissions become more therapeutical.

VII *"Hearings" and decisions concerning parole*

In the reform that we propose, hearings by sections of the Board will no longer be relevant as parole will be decided by treatment teams (in co-operation with the parole officer and the local member of the board). We see such decisions as being taken after a case discussion, the prisoner not being present. However, it is necessary to maintain a higher authority in the local parole section in order that a prisoner may appeal if he feels wronged by the decision taken by the treatment team.

As regards suspensions, forfeitures and repeals, and should semi-open houses were established, we would like to see a parolee enjoying temporary residence if this is to be helpful to him; this implies that his permit will not be suspended and that he will not be returned to an institution for temporary detention.

VII *Daytime parole under the Parole Act and temporary absence under the Prisons and Reformatories Act*

1) Programs above-mentioned do not need to be integration if integration is already taking place through the treatment team of an institution.

2) If the institution does not provide treatment, under the definition given in the Parole Manual, parole is then somewhat restrictive. These criteria should leave room

to treatment possibilities, ie psychological, psychiatric or others.

Under existing criteria, the prisoner must return to the institution at night; this requirement, it seems to us, only compounds the difficulties met by the prisoner in his rehabilitation. First, institutions are too remote from urban centres, (transportation is difficult); it is tiring and even depressing for a prisoner to face *at the same time* two highly dissimilar worlds: a closed milieu and an open milieu.

Transition houses (homes) could be better utilized as, by definition, they are a step between the detention world and freedom. These houses should also be at the disposal of parolees experiencing difficulties without them being obliged to return to prison and lose their jobs and their period of good conduct. Except for specific cases, daytime parole should lead to actual release, which is not the case presently.

3) What should be the criteria for obtaining temporary absence? The criteria already defined for obtaining temporary absence seem realistic to us. However, they should be integrated in a specific rehabilitation program.

A better co-ordination between parole services and the penitentiary service would be desirable.

There is a source of conflict from the fact that parole is granted by a body independent from the penitentiary service, whereas temporary absences remain the responsibility of penitentiary directors. It often happens that NPB will recommend temporary absences and will later refuse to parole a prisoner, thus leaving to directors a responsibility that the Board should share. In the context of our objectives, such a situation would disappear.

IX Compulsory supervision

1) How will compulsory supervision affect the regular parole system and other parole programs?

Compulsory supervision could have a negative influence on the regular parole system and other discharge programs, i.e. in disputable cases, the service would perhaps tend to prefer using this type of supervision which is less lengthy and less burdensome in every aspect.

In its conventional sense, compulsory supervision appears to us to be a desirable procedure because it does not leave the prisoner without support at the end of his sentence, and thus ensures continuation of the therapeutic treatment in the familial and social milieu of the released prisoner.

The officer does not become just a censor of supervisor but actually plays his role which is to fully take part in the resocialization of the individual.

It is obvious that this type of supervision will require social workers able to deal with the particular problems of a released prisoner who reintegrates society.

2) Does compulsory supervision make sentence reduction obsolete? On the contrary, they may be considered as an incentive for the prisoner in the sense that he is not inclined to passively serve his sentence and leave decisions to others; thus he is allowed some initiative.

X Parole and special categories of offenders

Classifying offenders is justified only for statistical purposes and for establishing treatment stages. Except for this, it is not justified. An individual indeed changes and leaves the "category" in which he might have been classified at the beginning. Thus in labelling individuals in a too permanent and static way, they are locked into circle which they will have great difficulty to come out of.

Moreover, it is not up to the Board to decide about categories and policies to be followed in this respect, but specifically those responsible for the treatment. Finally, and all the more so, we do not suggest that these "special categories" be made public.

XI Documents to follow later.

(This point not covered specifically by brief)

XIII Documents to follow later.

XIV Assessment of the parole system

—That a study be made of the rate and types of recidivism among parolees during their period of parole controlled freedom.

—That a study be made of the rate and types of recidivism among parolees after their period of parole controlled freedom.

—That in such studies, a very clear distinction be made between parolees chosen by the National Parole Board and those under compulsory parole.

—That the public be educated to understand that the best long-term protection for society is to accept the problem of delinquency as an actual fact which cannot be removed miraculously with repeated stays in detention houses. Sooner or later, the prisoner will reintegrate society and it is preferable that he then be under a certain control, but that does not mean that he is 100% guaranteed against recidivism.

—That the community be made aware of its responsibility in the rehabilitation of those who once were its offenders.

Following brief of April, 1972.

Questions XI and XIII.

Submitted by the psychologists
of the Canadian Penitentiary Service
Quebec region

June, 1972.

XI—Staffing of Parole Services and Use of Private Agencies:

(a) The staff is not in-sufficient number. Present officers have important responsibilities, namely: to assess and supervise prisoners. If assessment is to be useful and enlightened, it requires time. It is obvious that one single interview and a review of file and case history are a rather poor minimum. Several interviews are often needed, and one needs time to check important data in order not to have to base oneself merely on appearances or simply on what the candidate says. Above all, the public safety as well as the good of the prisoner are at stake. It is mainly at this stage that one can reduce the risk of a parole breakdown (and thus of a possible new

offense, with all the costs involved for the government, the victims and the delinquent himself) and, on the other hand, it is also at that stage that we can reduce the risk of a decision based more on arbitrary factors than on facts (for example, lack of data or failure to check them may result in the Commission rejecting an application because they are thus compelled to make a judgment based on data with little validity).

As for supervision, it varies from one parolee to the other. One thing is sure: it requires, in the beginning, frequent meetings (for example between the first three to six months), all the more so as it is during this period that chances of recidivism are the most acute. It is obvious that if the supervisor merely "supervises", in the sense of "having a look", he does not meet public safety requirements. The parolee needs help and support when he leaves; preventing recidivism, or at least delaying it, implies that the supervisor commits himself to the work; the parolee indeed is not living in the abstract, and he often must struggle to avoid recidivism. The supervisor must intervene in this struggle, otherwise the risk exists that the vicious circle will return almost immediately. Thus, the parole officer must have enough time to travel and to find ways of concretely helping parolees.

It is therefore unconceivable to think that the present number of officers for each district is sufficient to efficiently meet such requirements, even at an acceptable minimum level. An increase in the number of officers would in fact save a lot of money to the government, reduce the risk of honest citizens becoming new victims too rapidly, and reduce the risk of the parolee entering again into a circle of despair out of whose tightening grip he will eventually try to wrest himself, to the detriment of the public interest and public funds.

(b) Finally, we think that there should be a few psychologists attached to large districts (that is: Montreal, Laval, St-Jérôme, Granby). First of all, this is due to the fact that institutional psychologists are often overworked and are very reluctant to supply psychological evaluations asked for by the Commissioners, especially for cases they do not know (and they are numerous). When we think that an *adequate* evaluation of ordinary simple cases calls for two or three days work, it is understandable that institutional psychologists strongly object to supply such evaluations. They have the choice between supplying a valid evaluation at the expense of the heavy requirements of their daily task or supplying a very weak evaluation which would not be useful of the Commissioners.

Furthermore, under the parole system, there are cases where the psychologist could play a very efficient role when the parolee faces difficulties. By difficulties we mean critical situations, whether they be of a personal, marital or family nature. Certain offences are committed as a means of solving personal, marital or family conflicts. To prevent a delinquent solution and allow a more socially acceptable solution calls for the application of more specialized measures. We believe that it is precisely while on parole that these conflicts can be really worked out and not in the institutions. The work must absolutely be started in the institution, but it can only be tested and used in a live and direct situation, for example, with the husband or the wife, or the family outside the institution.

Therefore, we propose to add to the staff of the parole service a few psychologists in each large district. These psychologists would ensure: (1) part of the evaluation applications requested by the Commissioners; (2) therapy assistance in cases of offences that are delinquent solutions to marital or family conflicts (marriage counselling and family counselling); (3) continuation of individual therapy work started in the institutions which requires the direct contact of the inmate with the daily realities of free society.

XIII—*Reactions of society to the parole system:*

(a) It is a very broad subject and we would not know how to answer it properly. However, we would like to make a few comments and suggestions.

We note that people are often ignorant of what goes on in institutions and at the parole level. We also note that certain unscrupulous newspapers publish articles which are often dishonest under the guise of informing people about "what is going on there". It is obvious those newspapers are in search of sensational news to please readers who are prepared to believe anything. However, some important Montreal newspapers have published long articles whose accuracy and honesty are indisputable. But the latter are not frequent. It is more common to read titles like: "Another person on parole... has done this or that" followed by explicit or implicit emotive judgements.

We think it is normal that people should know what becomes of young offenders. But once this is done, the trouble is far from being over. If the public knew everything, it could choose to be repressive and act against the rehabilitation measures implemented in the last few years. However a public debate could arise in the open and have positive effects on the penitentiary and parole system. It is obvious the picture of the young offender drawn by public opinion is a very emotive and moralizing one (the young offender is always "bad"; he is given a house, a job, food, while there is unemployment, etc.) We are well aware of the fact that there is some degree of fairness in such responses in that it is normal for a society to want to assist its servants and ward off those who disparage it. But as long as we maintain this position, we shall not be able to reverse the current and help transform detractors into servants. And, in this kind of debate, all the chances to win are not on the side of logic.

Moreover, faced with the danger that a public debate would mean for society itself and for its delinquents, it would be more useful to maintain regular contacts with some of the most important newspapers, and to give them sound information, about present conditions in penal institutions and about the parole system, with the emphasis being put on what the prisoner does, what his opportunities are as well as on existing reform plans. The purpose of all this would be to protect society and assist it in the long range, by helping its detractors become useful members of the community. So, for instance, some new directives concerning the penitentiaries or the parole system should be published in the media, together with explanations about the situation which was created by the old guidelines and the objectives of the new ones.

Furthermore, as the public is not aware of the difficulties and of the positive efforts made daily with the delinquents, nor of our purposes as a whole, it would be useful to open up the institutions and let the inmates communi-

cate with citizens who wish to promote rehabilitation, directly or indirectly, whether they be parents, citizens' committees or employers. This window for the inmate on the "outside world" is also a window for the citizens on the "inside world", and a hope for a positive change in mentality on both sides.

Finally, films and lectures (given by those who work daily in the institutions and in the parole area) could be offered to associations liable to play a role in the release on parole of the inmate, with the purpose of presenting facts, difficulties, questions, hopes and of promoting a cautious and efficient co-operation.

(b) The role of the volunteers:

This rôle seems very important to us and should even be broadened. In fact, we have noted that while working in institutions, volunteers manage to establish relationships with the inmates which are often of a more faithful and fulfilling nature than those the inmate had known himself. Furthermore, these volunteers often fill a void the inmate has to face because of a break in family or marriage ties. We know the importance for many prisoners of having "someone who thinks about him" outside; often, this volunteer means: "I am still worth something" or "I can still hope" or "when I get out, I will have someone to help me" or even "I will have a visitor next Sunday". The faithfulness of these volunteer visitors in observing these various appointments seems precious to us and even vital in some cases.

On the other hand, we are able to verify the lack of communication among voluntary visitors, institutions and the parole service. We do not know exactly what the visitors think and do, just as they do not know exactly what we think and do. One of the first objectives would certainly be to have meetings in order to understand each

other and establish together an effective co-operation program, especially with respect to releasing inmates on parole. We believe, indeed, that we must go beyond peaceful co-existence in order to really co-operate. This co-operation could focus, for example, on the preparation of the future return of the individual into society and on the period during which the individual is a parolee; we are of the opinion that the parolee may at times have a much closer relationship with his voluntary visitor or visitors than with his parole supervisor and that, consequently, this visitor can sometimes do more and prevent difficulties for the parolee better than anybody else. A trusting co-operation would bring about the total objectives of both organizations: the well-being of the prisoner and of the parolee and the protection of society.

One point remains: we realize that the delinquents sometime succeed in "using" their voluntary visitors just as they tend to use everybody else. The visitor gets caught, as we do, but maybe more easily so. We are sure that the visitors are aware of this but we would like to co-operate with them and with the parole service to increase the chances of success of the parolees beyond the drawbacks of these manipulations, the arguments of which are often convincing, but which lead to useless expenditures of energy and to unfortunate circumstances.

Finally, we consider the voluntary visitors as an association of friends of the prisoners who could also inform the public of what is going on with parolees and who could, in co-operation with the parole service, develop practical means of helping the parolees as well as prisoners in institutions: for example, provide opportunities for intellectual and artistic development and make broader contacts with employers and services who could eventually help the parolees.

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